McMaster's Irregular and Regular Commercial Paper

(ILLUSTRATED)

BILLS, NOTES, CHECKS, DRAFTS, ENDORSEMENTS, GUARANTEES, Etc.

DECLARED IRREGULAR, NON-NEGOTIABLE OR VOID,
BY THE HIGHEST COURTS OF THE SEVERAL STATES.

THE UNIVERSITY
OF ILLINOIS
LIBRARY
332.5
M227m
1920

Return this book on or before the **Latest Date** stamped below. A charge is made on all overdue books.

University of Illinois Library

JUL 13 to 3

M32

McMaster's Irregular and Regular Commercial Paper

A TREATISE ON THE LAW OF NOTES, CHECKS AND DRAFTS: WITH TEXT OF THE NEGOTIABLE INSTRUMENTS LAW

ILLUSTRATED BY FAC-SIMILE INSTRUMENTS

CLEAR — SIMPLE — COMPLETE

NEW AND ENLARGED EDITION

COPYRIGHTED, 1920.
BY THE McMASTER COMPANY

THE McMASTER COMPANY
37 WEST 39TH ST., NEW YORK CITY

PREFACE.

This book is to make possible the acquirement of so much of the law of commercial paper as the business man or his assistant finds necessary in the transactions of this commercial day. The books heretofore compiled on this subject have been designed for lawyers and law students in law offices, and their contents are largely devoted to matter necessary only to the prosecution or defence of lawsuits. They do not meet the requirements of the counting-room for two reasons:

First. The business man cannot grasp and retain the information so put forth, without several years of study in a lawyer's office, and a coming in contact with forms and actual cases as set forth in this work.

Second. The old methods require a personal instructor, and he must, almost necessarily, be a lawyer.

It is claimed for this book that much technical matter that could only be used in the prosecution of lawsuits is omitted.

That the necessary matter is simplified in language and is so illustrated by facsimiles of correct forms and irregular instruments, bearing explanations and cautions, that the business man can carry the information in his eye and mind until it becomes knowledge.

As an aid to the better understanding of the subject, considerable space is given to questions on the text and illustrations, and the answers to these questions are so indicated by exact reference to the matter relative to these questions, that one is guided to a full knowledge of all that is to be said in relation to these questions.

33.5
M2a7m
1930

Comm. 28a21 R.c.d pam 51 copies

CONTENTS

PREFACE ii
DEFINITIONS AND MEANINGS OF TERMS 3, 4
LAW OF COMMERCIAL PAPER . . . . . 5 to 56
USUAL FORMS OF COMMERCIAL PAPER . . . . . A to U, pages 57 to 98
NEGOTIABLE INSTRUMENTS LAW . . . . . 99 to 464
PAPER, IRREGULAR, NON-NEGOTIABLE OR VOID . . . . . Numbers 1 to 140, pages 103 to 520
QUESTIONS . . . . . 566 to 586
INDEX . . . . . 587 to 594

475447

DEFINITIONS AND MEANING OF TERMS.

Bill of Exchange. A written order from one person to another, directing the person to whom it is addressed to pay a third person a certain sum of money therein named. (Bouv. Law Dict.)

Check. A written order or request, addressed to a bank or persons carrying on the business of banking, by a party having money in their hands, desiring them to pay, on presentment, to a person therein named, or bearer, or to such person, or order, a named sum of money. (Bouv. Law Dict.)

Promissory Note. A written promise to pay a certain sum of money, at a future time, unconditionally. (Bouv. Law Dict.)

Drafts, as used in the collection of debts, are not usually negotiated. The office of a draft is to collect for the drawer from the drawee, residing in another place, money to which the former may be entitled, either on account of balances due or advances upon consignments; and although they may sometimes be used for raising money (as is a bill of exchange), that is not the necessary or ordinary purpose for which they are employed. 93 N. Y. 280.

"Bill" means bill of exchange. Sec. 191, post.

"Note" means negotiable promissory note. Sec. 191, post.

"Instrument" means negotiable instrument. Sec. 191, post.

"Commercial Paper" means bill, note, draft, or check.

"Paper" means commercial paper.

"Person" includes a partnership, or a corporation, or several persons.

"Principal Obligor"—"Person Primarily Liable." The party who by the terms of the instrument is bound, in law, to pay the debt,

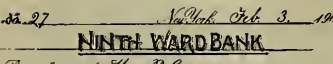
and also to save harmless, release and discharge all other parties to the instrument. Sec. 192, post.

"140 N. Y. 260" means that the statement preceding such abbreviation is based on a decision of the highest court of the State of New York, and reported in Volume 140, page 260, of the official reports of such decisions. Similar abbreviations, with reference to other States, mean similar kinds of references.

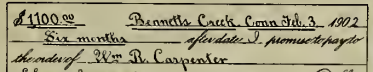
Negotiable Instruments Law. A uniform statute on the law of negotiable instruments now adopted in forty-five States and the District of Columbia.

COMMERCIAL PAPER — NEGOTIABLE INSTRUMENTS.
THE THREE PRINCIPAL FORMS.

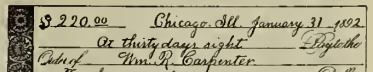
CHECK-USUAL FORM



PROMISSORY NOTE.~ USUAL FORM


$1100 00 Bennetts Creek, Conn Feb. 3 1902
Six months after date I promise to pay to
the order of Wm R. Carpenter
Eleven hundred Dollars
at Exeter Street Bank
Value received
No Due Henry Hamilton

BILL OF EXCHANGE-DRAFT-USUAL FORM


$220 00 Chicago Ill. January 31 1902
At thirty days sight Pay to the
Order of Wm. R. Carpenter
Two hundred & twenty Dollars
Value received and charge the same to account of
To Obadiah Stephens
No. Charlestown S.C. John Carter

1. **Negotiable Instruments.** Practically every written contract or agreement which involves the payment of money or property, is negotiable in the sense that the owner can sell it to another and that the purchaser can enforce it to the same extent that the original owner could if he had not assigned it. Bonds and mortgages, contracts for the sale of real estate or personal property, building contracts, leases, etc., would be negotiable in the above sense, but they are not "negotiable instruments."

2. **Distinction.** The material difference between a non-negotiable instrument and a negotiable instrument is that the party to the non-

negotiable instrument who has agreed to pay money or property under it, may, when the money or consideration is demanded by a purchaser, set off against it any claims that he has against the original owner, which he could have set off if it had not been assigned,—while the bona-fide purchaser, before maturity, of a negotiable instrument can enforce it for its full amount against the maker, regardless of any counter-claim or defenses that the maker has against the original owner.

As illustrative of this: If Alfred Adams and Barney Bell had made a written contract under which Adams had agreed to pay Bell one thousand dollars on the completion of a certain building which Bell had agreed to build for Adams, and if before the completion of the building Bell had assigned the contract or the money to be paid on it to Charles Clark, and had directed Adams to pay the money to Clark, and Clark demanded the one thousand dollars when it was due, Adams could say, if such was the fact, that he had had other dealings with Bell and that in such other dealings there was a balance of five hundred dollars due Adams from Bell, and therefore he would pay Clark but $500,—the balance that would have been due Bell if he had not assigned the money due on the building contract;—and this settlement the law would enforce, as the building contract is a non-negotiable instrument. But if Adams had given Bell his promissory note for one thousand dollars due at a future time, and if before that time Bell had indorsed the note for a valuable consideration to Clark, then Clark could compel Adams to pay him the full one thousand dollars regardless of any sums that Bell might owe Adams on account of other transactions.

3. Origin—Necessity of—Negotiable Instruments. Originally all instruments, including checks, notes and bills of exchange were non-negotiable,—in the sense that the maker could, when asked for payment, deduct from the amount due on the instrument any just claim that he had against the original owner. Such just claim would then be termed a counter-claim, or set-off. In the revival of commerce in Italy, in the eleventh century, merchants and traders, feeling the necessity of a

moneyed instrument, that could be used in barter and trade, to a limited extent in the same way that bank bills are now used,—and appreciating that no such instrument could be circulated or sold readily, no matter how financially strong the maker was, if he, the maker, could always insist on adjusting accounts with the original owner,—adopted a custom, known as the "custom of merchants," which soon after became, or had the force of, a law known as the "law merchant," under which notes, checks, drafts, and bills of exchange, drawn in certain prescribed forms, and in the hands of a bona-fide purchaser, could be enforced to their full extent against the maker, regardless of any defenses or counter-claims that the maker might have against the original holder; such instruments are "negotiable instruments."

4. Negotiable instruments are thus given many of the peculiarities of money—*i.e.*, gold and silver coin and bank bills. Neither coined money nor bank bills are termed negotiable instruments or commercial paper, but they are in the highest sense negotiable.

5. A thief who has stolen coined money or bank bills can pass such money to an innocent party, and the latter has a perfect title to it and cannot be deprived of it even if the party from whom it was stolen could positively identify the money and prove the theft; such is the case if the stolen property is a valid negotiable instrument. It may be said here that as to all other personal property—gold, silver (except coined money), jewelry, grain, horses, cattle, merchandise, etc., etc.—the true owner from whom it may have been stolen can retake such property wherever found without compensating the holder in any way, although the holder may have purchased the property from the thief or other person in perfect good faith and paid full value therefor.

6. Money has always had this free negotiation. Negotiable instruments—commercial paper as they are often termed—are a later favor granted by the law, and it has jealously required rigid restrictions to be used in their issuance.

7. Money (coin and bank bills) is issued by the government, or

under its supervision, and hence it is uniform, and one who takes it does so freely and without examination except to know that is not counterfeit. Every man of full age can issue commercial paper, and of the millions of pieces that are put in circulation and negotiated daily scarcely any two are alike, and close scrutiny and a knowledge of the law is often required in order to ascertain whether they are in fact negotiable instruments.

The importance of this knowledge is appreciated when it is known, as it has been shown by government statistics, that over 90 per cent. of the daily moneyed transactions of this country are carried on through the medium of commercial paper.

8. Bona-fide Holder. In order to take advantage of the special privileges attached to a negotiable instrument, the holder must have taken it before it was due, and with no notice of any irregularity in the instrument, or of any valid defenses that the maker had to it,—and the owner must have parted with some thing of value in acquiring it. The consideration need not have been money,—it may have been property, the granting of credit, or some disadvantage which the holder assumed in acquiring it. Such a holder is a "holder in due course," often spoken of as a bona-fide holder.

9. What Constitutes a "Holder in Due Course." "A holder in due course" is a holder who has taken the instrument under the following conditions:

a. That it is complete and regular upon its face;

b. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

c. That he took it in good faith and for value;

d. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it." Negotiable Instruments Law. Sec. 52, post.

10. The terms "bona-fide holder" and "holder in due course" are often used in the same sense, but, technically, there is a difference in the

terms, as a person who takes an instrument in good faith is, properly, a bona-fide holder, even if the instrument is bad on its face; but if the instrument or the transaction do not conform to the four requirements set forth in the above definition, the holder is not "a holder in due course," and cannot be protected by all of the safeguards thrown around negotiable instruments. The terms "bona-fide holder" and "holder in due course" are hereafter used in the same sense.

11. Commercial Paper. While the bonds of railroads, manufacturing, municipal, and other like corporations, issued for the purpose of securing loans of money, are deemed negotiable, if expressed in apt language (110 N. Y. 469), they are not called "commercial paper," and as this work is confined to the treatment of commercial paper only, such bonds are not hereafter referred to or included in the terms "negotiable instruments" and "commercial paper." Where either of these terms hereafter appears it is treated as synonymous with the other.

12. Every piece of "commercial paper" is necessarily a "negotiable instrument," but, as in the case of the bonds above mentioned, the term "negotiable," or "negotiable instrument," is sometimes applied to instruments that do not carry with them each and every attribute of commercial paper.

13. There is no particular language or form to which these instruments must conform, but they must be restricted to the single purpose of directing the payment of money, or promising its payment—not of performing some other act. See Forms A, B, C. Sec. 1, post.

14. It is absolutely essential that they be certain in every particular—free from provisos, contingencies, qualifications, doubts, or restrictions. The time of payment must be fixed and capable of computation; the amount certain and payable only in money. See Forms A, B, C.

15. A departure from these certainties or an enlargement of the duties to be performed by the maker or parties to the instrument will relegate the paper to the level of simple contracts which pass only

subject to all equities and counter-claims, and the writing of one's name on the back of which imposes no financial obligation.

16. Just what words will or will not destroy the negotiability of a promissory note or bill of exchange is a subject on which the courts differ. It is seldom done by saying too little, but usually in saying too much,—an attempt to make the instrument accomplish more than one purpose,—the unconditional payment of the sum of money for which it is drawn.

17. **Form.** There are but three forms of commercial paper in every-day use,—Check, Promissory Note, Bill of Exchange, or Draft. Their usual form is shown in illustrations A, B, C, D.

18. While there is no regular, prescribed, form for these instruments, there are certain orderly forms which are usually followed, and there are certain prerequisites without which they are non-negotiable instruments: Sec. 1, post, et seq.

a. They must be in writing (ink, pencil, or type impressions), and they must be signed by the maker or drawer;

b. They usually state the place from which they are issued, but that is not essential; they are usually dated, although that is not absolutely necessary if their time of payment is not expressed as being a certain period of time "after date";

c. They must be payable on demand, or at a fixed time, or a determinable future time, or at a time certain to occur;

d. The promise or order to pay must be unconditional and not contingent on some other duty or act being performed, either by the payee or any one else;

e. They must be payable "to order" or "to bearer." If they are payable to order the payee must be named with such certainty that he or it is capable of being identified;

f. They must be payable in money;

g. It is usual to name a place of payment in the instrument. If no place of payment is named, the instrument is deemed to be payable, for the purpose of presenting and protesting for non-payment, at the place

of business of the maker or the acceptor or drawee, or if he have no place of business, then at his residence. If the paper has not been dishonored (not been paid) on the day of its maturity, it then becomes payable at the hands of the owner, and the debtor is bound to hunt him up and tender payment wherever the owner may be.

h. They must not show any alterations,—erasures or additions on their face.

i. They must not carry on their face any information that would lead a prudent man to inquire further as to their validity.

j. The time of payment expressed in the instrument must not have passed,—and if no specific time is expressed they must not have been issued an unreasonable time.

19. Referring to the foregoing provisions:

a. The body of the instrument is "in writing" if it is printed or typewritten or written with ink or pencil. The signature of the individual executing the instrument, for himself or for a corporation or for another, must be in either ink or pencil, although a stamped impression would in many instances be binding; but one who is entitled to demand or receive a signature to commercial paper can demand that such signature be the written name of the signer notwithstanding the fact that a stamped signature or some abbreviation or other indication might be binding. If the signature is that of a corporation it is not objectionable that the corporate name be stamped or printed if the officer's name is written: *23* Minn. 263: 4 Vt. 11: 35 Me. 324: 132 Mass. *227*: 33 Ill. 424. A signature by initials only will be binding if it can be proved. 33 Ill. 424: 6 Wend. (N. Y.) 443. Also by an adopted business name. 104 Mass. 336.

b. It is not necessary to the validity of the instrument that the place of making be given,—but it always should be. 78 Ill. 558. Absence of date does not make the instrument invalid. 91 Pa. St. *17*: 31 Ill. 306: 32 Ind. 375.

If no date be given, the date is deemed to be that of the delivery of the instrument to the person first entitled to receive it. See No. 11.

If it is an impossible date, as September 31, the date of delivery usually governs, although it has been held that such date is that of September 30. It is immaterial as to whether an instrument is dated Sunday or not, if it was not in fact made and delivered that day.

The fact that the instrument is post-dated (dated ahead) or ante-dated, does not affect its validity or negotiability; except that a check dated ahead is usually considered as a bill of exchange and not as a check. 48 Me. 198: 32 Me. 524: 69 Cal. 550: 17 Ala. 45: 156 Mass. 508: 8 Wend. (N. Y.) 478: 47 Mo. App. 215: 30 Vt. 11.

It has been said that a check without a date is a nullity, but there are no decisions to that effect and seemingly no ground for the statement. A bank might possibly be warranted in refusing payment of such an instrument as defective in one of its orderly parts, but it must be, and is, the obligation and order of the drawer payable on demand.

An instrument dated on Sunday, but not delivered until a future week day, is good. An instrument is not complete, nor does it become binding, until it is delivered and the consideration passed, and it then, only, takes effect;—it has its inception only from that latter time,—it is not a complete instrument until then.

So if an instrument be dated on a week day but is not delivered and the consideration is not passed until Sunday it is a Sunday contract, and it will not be valid except in the hands of one who is ignorant of the Sunday part of the transaction. 48 Me. 198.

An instrument dated or delivered on a holiday other than Sunday is not thereby prejudiced in any way.

c. The instrument is usually payable on demand or at sight or at so many months or days after date, or at a fixed day of a certain month.

The order or promise to pay may be in installments, if the time of payment of the installments is clearly expressed.

If no time of payment is expressed they are payable on demand.

44 Conn. 300: 24 Cal. 309: 56 Ga. 605: 52 Iowa 570: 146 Mass. 20: 125 N. Y. 254: 110 Pa. St. 318.

And the same rule prevails where the blank line for time is not filled up. 81 Mo. 275: 25 Mo. App. 170: 11 Ohio St. 61.

Where commercial paper is payable on demand the holder *can* make the demand at once, and he *must* demand payment within a reasonable time or the indorsers will be released. Just what is a reasonable time depends on the facts of each particular case. Sec. 193, post.

A check which is payable on demand must be presented not later than the next business day, if the holder lives in the same place as that in which the bank is located on which it is drawn. See Form F.

If the bank is in a different place the holder must start it there for payment not later than the next business day, or the indorsers will be released. 23 N. Y. 41: 5 Ohio St. 13: 95 Mich. 436: 40 Me. 60: 103 Ala. 458: 41 Conn. 344: 80 Md. 475: 30 N. J. L. 284: 42 N. Y. 558. Secs. 84, 146, 194, post.

As to demand instruments other than checks no precise number of days is generally fixed by law for presentment in order to charge indorsers.

Sixty days seems to have been the outside limit ever given by any court. The courts of New York have said that the indorser of such instruments has a right to expect the same prompt demand as a check would have.

The holder of such instrument, who expects to retain the liability of an indorser, should not delay demand for one day even. If he does, he does so at his peril. 100 N. Y. 539; 98 N. Y. 379: 88 N. Y. 339: 41 Vt. 387: 48 N. J. L. 513: 27 N. H. 230: 31 Minn. 33: 13 Mass. 131: 44 Me. 459: 40 Cal. 111: 31 Conn. 268: 29 Iowa 249: 23 Fed. Rep. 710.

At sight. An instrument payable "at sight" is usually treated as one payable on demand, but in some States days of grace are allowed on instruments drawn payable "at sight,"—this is never the case with paper payable "on demand."

Where an instrument is drawn payable at a certain time after sight, sight means the date of acceptance.

An instrument payable at the death of the maker, or a fixed time thereafter, is negotiable, as the event is sure to happen. But if payable when the maker or some other person should arrive at a certain age, or should marry, or on the arrival of a certain ship, etc., the instrument is non-negotiable, as that event might not happen,—and the rule would not be changed and the instrument become negotiable even if the uncertain event did happen. Sec. 4, post.

If a time of payment is expressed it must not be coupled with a contingency, and it must be a time certain to arrive.

The following expressions as to time of payment are bad, as the events may not happen:

When my son is of age. 13 Ill. 604.

When I am in funds. 3 McLean (U. S.) 272.

When my farm is sold. 22 Wis. 415.

When my father's estate is settled. 81 Ill. 172.

When my crop of wheat is sold. 19 Wall (U. S.) 560.

When a certain railroad is built. 14 Ohio 455: 109 N. Y. 63: 62 Tex. 188. Cf. Sec. 5, post.

If the time as expressed is certain, but the instrument provides that the maker may make indefinite extension, the instrument is not negotiable. 126 Pa. St. 194: 59 Iowa 348: 45 Mich. 371: 104 Ind. 278: 39 Fed. Rep. 262.

An instrument payable at death is negotiable, as the event is sure to happen. 131 N. Y. 462: 46 Ala. 587: 105 Ind. 543.

d. The following conditions coupled with the order or promise to pay would destroy the negotiability of the instrument: "If on or before that date certain bonds are delivered:" "If a certain lease is surrendered:" "If a certain mortgage is not discharged."

A check or order on a savings bank which says that the pass book must accompany the order is non-negotiable. 139 Pa. St. 52.

An order or promise to pay out of a special fund is non-negotiable, as the fund may be insufficient, and the rule is not changed if the fund is, in fact, sufficient. See Forms 12, 13, 15. Sec. 3, post.

An order to pay a certain sum out of the proceeds of a certain claim is non-negotiable. 28 Ala. 408.

Or out of the last payment on a certain contract.

Or out of a sale of certain bonds.

Or out of money collected or to be collected upon a certain mortgage. 4 Met. (Mass.) 235: 51 Miss. 631: 33 Tex. 282: 61 N. Y. 257: 11 Neb. 580: 16 N. J. L. 440.

Or on account of cotton shipped this day. 25 N. Y. 241.

And the same rule applies to an order to pay a certain sum, "and charge to account of paving" a certain street. Or to pay "and charge to account of labor and materials furnished" for certain building. 81 N. Y. 454: 75 N. Y. 370: 43 N. H. 128.

e. If the instrument is payable "to bearer," or to a person "or bearer," it is not essential that the name preceding the words "or bearer" be that of one capable of identification. But if the instrument be drawn "to the order of," or to one "or order," it is essential that the person or persons or body named, be capable of identification. Secs. 8, 9, post.

An instrument payable to A. B., without the words "to order of" or "order of," "or bearer," or their equivalent, is not a negotiable instrument, except in States where the contrary is provided by statute. See Form T.

An instrument, knowingly made by the maker, payable to the order of a fictitious payee, is, in effect, payable to bearer, and is negotiable. If the bona-fide holder of such note desires, he may write the name of the fictitious person as indorser on the note. The fictitious payee may be the same name as that of an existent person,—but this does not change the rule.

Paper drawn to fictitious payees does not have the sanction of law and cannot be enforced in the hands of those who take it with notice of its infirmity.

But paper payable to an impersonal payee,—as "Cash," "Bills Payable," etc.,—is deemed payable to bearer, and is regular and valid, as is paper payable to the order of one under an assumed business name. 70 Miss. 655: 26 Minn. 336: 10 Mass. 360.

A note drawn by a partner payable to the firm, or vice versa, cannot be enforced unless transferred and held by a third party; and this rule applies to separate firms if one partner in either firm is a member of the other firm.

The maker, drawer, payee, drawee, and acceptor of an instrument may be the same person; and if such person indorses the instrument and puts it in circulation it will be held to be a negotiable instrument.

If the instrument is payable "to order" the payee must be a person, persons, firm, corporation, or body capable of being identified at the time the instrument is made,—it is not sufficient that the payee come into being or is capable of identification at the time the instrument is due. 26 Minn. 410: 59 Iowa 649: 16 Ill. 169.

Where the instrument is payable "to bearer" there need be no further or closer expression of a payee.

There may be several payees, but not in the alternative. Thus an instrument payable "to the order of B. or C." is defective as to payee. 106 Mass. 561: 19 Ill. 81.

But it is held that a bill of exchange may be properly drawn on "A. or B."

f. If the amount stated in figures and that stated in words do not agree, the words will govern. The instrument must be payable in money: "Dollars" is the proper expression. "Gold Coin," "Specie," "Legal Tender," are not improper terms. But if payment is directed "in current funds," "in New York Exchange," "in currency," the instrument is generally held non-negotiable.

The following mediums of payment have been held to make the instrument non-negotiable (see No. 86):

In United States Bonds. 13 Minn. 90.

In Current Funds. 76 No. Car. 227: 63 Tex. 48: 18 Wis. 41.

In Bank of England Notes. 2 Rose 225.

"With Exchange." 38 Fed. Rep. 283: 28 S. C. 504: 4 N. Dak. 30: 10 Mo. App. 527: 61 N. W. 584: 44 N. E. 573.

A promise to pay, or the option to pay, in goods, chattels, bonds, or other commodities, renders the instrument non-negotiable.

After the instrument is properly drawn payable in money, it will be non-negotiable if it provides for or directs the performance of some other act, or for the further payment of some indefinite amount or account,—and this rule extends to memoranda made on the margin or back of the instrument, if such memoranda expresses an agreement made by the parties at the inception of the instrument.

A distinguished jurist has said that the instrument should be "a courier without luggage."

A note that provides for the payment of attorneys' fees in case of suit being brought is non-negotiable in many States. It has been so held in 103 Cal. 319: 80 Wis. 133: 92 Pa. St. 227: 69 Md. 433: 86 Mich. 191: 29 Minn. 120: 84 No. Car. 24. See No. 124.

Contracts in the general form of promissory notes, but which are non-negotiable, which provide for the payment at a certain time of a sum of money "or the delivery of 1,000 bushels of corn," or other alternative act, are enforceable contracts, and up to or on the date of the maturity of the instrument the promisor may have his choice as to the medium in which he will discharge his obligation, but if the instrument is not paid at maturity the holder can demand and enforce the payment of money. 57 N. Y. 573: 7 Ill. 461: 32 Me. 44: 21 Tex. 466.

g. In Alabama, Indiana, Kentucky, Virginia, and West Virginia

statutes have been passed which provide that negotiable notes must be payable at a bank in the State, and in Kentucky such notes must also be indorsed to and discounted by a bank in the State.

The instrument need not express a consideration: the words "value received" and like expressions are valueless. But in Missouri the words "value received" must, by statute, be stated in negotiable notes. See Form B.

h-i. **Alteration.** Alteration of material parts of the instrument not only destroys the negotiable character of the instrument, but it usually destroys the instrument itself and releases therefrom all parties who did not make the alteration or consent to it. Sec. 125, post.

In order that the alteration may be fatal it is not necessary that it be done with a wrong intent,—or that it increases the amount or the liability of the parties,—it is sufficient that a material part of the instrument be changed, even if the change in itself was immaterial in fact, or even if it would work a benefit to the parties to the instrument. But spoliation or mutilation by a stranger to the instrument does not release any of the parties.

The material parts of the instrument which may not be changed are:

Date.
Time of payment.
Payee.
Amount.
Place of payment.
Number of makers.

The alteration would be fatal if the date or time of payment were changed so as to give the maker and indorser more or less time in which to make payment.

And so if the payee is made to be another person or additional person.

Or if the amount were made less or greater, either of principal or interest.

Or if a place of payment were changed, or a special place of payment added if none were already expressed.

Or adding the name of another person as maker, although thereby the paper were strengthened and the liability of the present parties lessened.

An alteration can be made by adding words as well as by changing those already written.

This seemingly harsh rule as to alteration is applied by the courts to all written contracts,—it is not limited to negotiable instruments.

1. "Notice" of any infirmity, or of defect in the title would cove any information that a prudent person would gather from looking at the instrument, or information,—oral or written,—that might have come through any other source. Sec. 56, post.

The purchaser is not bound to inquire if his suspicions are not aroused, but he cannot shut his eyes or ears in the transaction and then be heard to say that he had no "notice" or that he acted in "good faith."

"Good faith" in such transactions is good faith in its plain, everyday sense, without quibble or evasion. If for any reason the would-be purchaser's suspicions are aroused, he must follow the trail to its end.

PARTIES.

See Forms A, B, C.

20. Drawer. The drawer, or maker, of a negotiable instrument is the one who promises to pay or the one who directs another to pay, and thereby promises that such another will pay.

21. Drawee. The drawee is the one who is directed to pay.

22. Payee. The payee is the one to whom the promise or direction to pay is made.

23. Acceptor. If the drawee adopts the direction to pay, and writes his name on the paper, he becomes an acceptor as well as a drawee. See Forms C-H.

24. Indorser. If the payee or any other person writes his name on the back of the instrument he is an indorser. See Forms A to U.

25. The original parties to a Check are (see Form A):
Drawer or Maker.
Drawee.
Payee.

26. The original parties to a Promissory Note are (see Form B):
Drawer or Maker.
Payee.

27. The original parties to a Bill of Exchange or to a Draft are (see Form C):
Drawer or Maker.
Drawee.
Payee.
And if the Drawee accept the instrument he becomes the Acceptor.

28. There is another party that usually appears as soon as the instrument is negotiated,—the Indorser.

29. **Drawer of Check.** The drawer of check assumes more responsibility than does the drawer of other negotiable instruments.

30. By signing his name to a check the law says that the drawer has said, in effect, to the payee, "I have at this time an account with the bank on which this check is drawn, and there is at least as much money to my credit in that account, and not checked against, as this check calls for."

31. If such are not the facts the drawer in signing and issuing the check has committed a fraud, and may be punished criminally. The drawer of a check further promises that if the bank does not pay it on its due presentation he will pay.

32. **Drawer of Promissory Note.** The drawer of a promissory note in signing and issuing it says that when it is by its terms due and payable he will pay to the lawful holder the amount of money that is due on it. He commits no fraud or legal wrong, even if at the time he signs and issues the note he has no means at hand or under his control from which to pay it, nor if he sees no way that he can meet the obligation when it becomes due. He has agreed to pay, and the law, through its forms, will seize his property, if he has any, and have it sold to pay the debt if he does not pay it; but the law punishes him in no other way for not keeping his promise.

33. **Drawer of Bill or of a Draft.** The drawer of a bill of exchange or of a draft says, in legal effect, to the payee, that the drawee will accept the instrument, as soon as presented to him, by writing his name across the face of it, and that the acceptor will pay the amount of the bill or draft when by its terms it is due and payable, and if the drawee or acceptor fails so to pay, that he, the drawer, will then pay. See Forms C-H.

34. If the drawee fails to accept or the acceptor to pay, the drawer has committed no legal wrong in issuing the paper, even if he had grave doubts as to its payment when he so issued it.

35. **Drawee of Check.** The drawee of a check is always a bank, banking institution, or banker,—as the instrument is not a check unless drawn on a bank or banker.

36. If the account of the drawer of the check has a credit balance sufficient to pay the check the drawee,—the bank,—has promised in advance to pay it on presentation,—as a bank in opening an account with a depositor has, in law, without any special or further agreement, promised to pay the depositor's checks as presented if the depositor has sufficient funds to his credit to pay the full amount of the check when presented. The bank need not make partial payment of the check if the depositor's credit is not sufficient to pay the full amount, but it may if it choose.

37. It may be here stated that the promissory notes of the depositor which are by him drawn payable at the bank where he keeps his account are, on the day of their maturity, equivalent to his checks on the bank, and the bank is required to pay them without further order from him. And the same rule applies to bills or drafts which he has accepted payable at the bank.

38. **Drawee of Bill or Draft.** As before stated, if the depositor in a bank has funds there to his credit sufficient to meet his check, the drawee,—the bank,—has made in advance an implied legal promise to pay it.

39. But this is not so of the drawee of a bill of exchange or of a draft; for even if the drawee of such an instrument is indebted to the drawer the law does not say that the drawee (the debtor) has therefore promised to accept the bill or draft drawn by the drawer (the creditor).

40. It is true that the law says that the drawee (the debtor) must find the drawer (the creditor) and transmit to him in money the amount he owes him, but this legal duty does not compel the drawee (the debtor) to accept the bills or drafts drawn on him by his creditor.

41. It follows that until the drawee accepts the bill or draft he has

incurred no liability by reason of it,—and when he does accept it he is called an acceptor, and assumes for the first time any liability.

42. Acceptor. When the drawee accepts the bill or draft his position thereon has radically changed. From being a person who has no obligation by reason of the bill being drawn he has assumed the principal obligation,—he is "primarily liable," he is the "principal obligor." See Forms C-H.

43. He has, by accepting, held out to the holder of the bill, or the successors in ownership to the holder, that he is the principal obligor on the bill, and he promises that he will pay it when it is due.

44. This representation and promise is also, thereby, made by the acceptor to the drawer, payee, and indorsers on the bill.

45. He says, in legal effect, to each of them and all of them: "I will save you from paying the bill, and if you have to pay it I will reimburse you,—it is my debt."

46. The acceptance is properly made by the drawee writing the word "Accepted" across the face of the bill; adding the date of the acceptance and the drawee's name. See Forms C-H.

47. If no special place of payment is named in the bill the acceptor may add to his written acceptance a specific place of payment in the city, town, or village in which the bill is addressed to him. See No. 20.

48. It is usual in accepting a bill or draft for the acceptor to write the word "Accepted" across its face, naming the date of acceptance and adding his signature. It is not essential, however, that the acceptance be on the face of the paper, and the acceptor may be bound even if he do not add his name in writing, or if he write his name across the paper with nothing further. 18 Wall (U. S.) 604: 29 Me. 77: 30 N. H. 64: 2 Hill (N. Y.) 582: 37 Minn. 191: 28 Mich. 197: 118 Mass. 537: 88 Ga. 29.

49. While incomplete signatures and memoranda and stamped signatures may bind an acceptor, maker, or indorser, a holder entitled to demand an acceptance or indorsement may demand that it be the name of the person written in ink.

50. The holder of a bill must not allow the acceptor to qualify or make conditional his acceptance in any way, and if the drawee does so accept, the maker and indorsers will be released if the bill is not protested. Sec. 141, post.

51. The following qualifications are bad: Accepting so as to make the bill payable at a different time. 37 Minn. 191 : 25 Miss. 376. Varying the amount. 73 Mo. 179. Accepting payable in another city or town.

52. **Acceptor of Check.** While the obligation of a bank is to pay the depositor's check if his account is good for it, the holder of the check may for his own convenience desire to have the bank accept or certify it, and this the bank may do if it choose, although under no obligation so to do, by an officer or teller writing his name and title on the check and writing above his name any words of acceptance, as "Good," "Certified," "Accepted." See Form G.

53. The bank has then made the debt its own and promised absolutely to pay it regardless of the state of the depositor's account.

54. **Payee.** The payee of a negotiable instrument is the one to whom the promise is made. As payee, he assumes no financial obligation, but he frequently does assume obligations when he sells and transfers the instrument. Such obligation is usually that of indorser, and is treated under that head. See Forms A, B, C.

55. **Indorser.** A negotiable instrument differs from a non-negotiable one in the matter of the liability of one who writes his name on the back thereof. Strictly speaking, there is no such thing as an indorser of a non-negotiable instrument. Such designation applies only to one who writes his name on the back of commercial paper. Sec. 66, post.

56. **Indorser's Contract.** An indorser of a negotiable instrument contracts with the present or future holder of it that if the maker does not pay it at maturity, he, the indorser, will, if at that time it is properly

presented for payment and protested for non-payment and notice thereof is duly sent to the indorser. See Forms A to Q.

57. Except in a very few States, one incurs no responsibility who writes his name on the back of a check, note, draft, or bill of exchange, that is non-negotiable by reason of some of the non-negotiable words or clauses hereinbefore mentioned, or which for other reasons is non-negotiable.

58. This distinction in favor of a negotiable instrument is usually of far more importance to the creditor than the provision that he takes the instrument free from the counter-claims and defenses that may exist between the maker and the original holder.

59. An indorser, broadly termed, is one who writes his name on the back of a negotiable instrument.

60. If the name is so written on the back of a non-negotiable instrument the term "indorser" does not properly or legally apply. Cf. 50.

61. The indorser says, in legal effect, to the holder thereof, "The makers of this note (if it be a note) or the acceptors of this bill (if it be a bill) or the makers of this check (if it be a check) have promised to me and to you that they will pay this obligation, or cause it to be paid, when it is due. Now, if it is not then paid I will pay it on demand; but you cannot enforce my (the indorser's) implied promise unless you can show that on the day of the maturity of the instrument it was presented by a proper person at the place where it was payable and payment demanded and notice given me of its non-payment, and protest of the instrument duly made."

62. There may be any number of indorsers on a negotiable instrument.

63. The principal function of commercial paper is negotiability, and if is negotiated there is usually one indorser at least on it; for, as commercial paper is usually drawn payable to the payee "or order," it is

necessary to the negotiation of the instrument that the payee indorse it,—its negotiation is stopped until he does indorse it. The payee thus usually becomes the first indorser.

64. The order of indorsers' names on the paper is very essential to the indorsers, for each indorser, in addition to promising the holder that the paper will be paid, says in legal effect, to each person whose name appears below his on the back of the instrument, " I will save you harmless by reason of your indorsement of this paper if I am duly notified of its non-payment."

65. **Order of Liability.** Indorsers are liable to each other in the order in which their names appear on the paper, unless they have made a separate and specific agreement to the contrary. That is,—each indorser is liable for the full amount of the instrument to any of the several indorsers whose names may appear under his, but he is not liable in any way to an indorser appearing above him on the paper. See Forms A to Q. Sec. 68, post.

66. While this is the rule as between the indorsers, the holder does not have to recognize it; he may proceed against any of the parties regardless of the order of their liability among themselves. And he may compel any one of them to pay whole debt.

67. **Where Written.** The indorsement must be on the paper so long as there is room on the back or front to place it there. When there is no further room there it can be placed on a paper properly attached to the instrument,—attached there for that purpose.

68. **Assignment.** An assignment on a separate paper, whether in the nature of an indorsement or not, destroys the negotiability of the instrument and leaves it open to any equities the maker may have against it.

69. For the various forms of indorsement and their legal interpretation, see Forms A to U.

70. **Discharge of Indorser.** An indorser will be wholly discharged if the paper is not properly protested on the day of its maturity,—if it has

not then been paid; if the maker releases or surrenders or fails properly to protect any security that he holds for it; if he extends the time of payment without the indorser's assent; if the maker or any previous indorser pays it after it is due. Sec. 182, post.

71. Misspelled Name. If the name of the payee or indorsee is misspelled or wrongly designated, it is proper and usual for such person to indorse first the name as written and then follow with his proper signature. This would be proper even if the misspelled name or wrongly designated person was that of some other existent individual, firm, or corporation. The test in each case is, "Does the instrument belong to me, and was it intended to be drawn or indorsed to me?"

72. Principal Obligor: Party Primarily Liable. These terms, or either of them, apply to the person who is legally and morally bound to pay the paper in the first instance,—the one who, in law, has said to all the other parties, "I will save you all harmless from any liability or loss by reason of your being a party to this instrument."

73. The principal obligor to a promissory note is the drawer or maker. See Form B.

74. To an unaccepted bill of exchange or draft or check, the drawer or maker. See Forms C-H.

75. To an accepted bill or draft or check, the acceptor. See Forms C-H.

76. Order of Liability Among Themselves. Promissory Note. The order of liability among themselves to a promissory note is (see Forms A to H):

77. Drawer or maker.

78. First indorser.

79. Second indorser.

80. Third indorser, etc.

81. The maker has said to all of the indorsers, "I will pay this note in all events." The first indorser promised the same to all *subsequent* indorsers, but he owes no obligation to the maker.

82. The second indorser promises to save harmless all indorsers subsequent to him on the paper, but he incurs no obligation to those above him nor to the maker, etc.

83. If a maker pays the note, he of course can have no claim on the indorser.

84. If an indorser has to pay the note, he can reimburse himself in full from the maker or any or all parties who indorsed above him, but he can have no contribution from those who have indorsed below him.

85. Where several,—say, for illustration, three,—persons have signed the note on its face as makers, they, unless a different agreement can be shown, have agreed among themselves each to pay one-third of the amount, and if one has been forced to pay, he can make the others contribute their share. See Form U.

86. But this is not the rule as to several indorsers. Each has agreed to those under him to pay the whole amount.

87. The holder of the note need pay no attention to any of these agreements. He can proceed against all of the parties or any of them for the whole amount.

88. These rules as to liability apply to all commercial paper.

89. Unaccepted Bill of Exchange or Draft; Order of Liability Among Themselves. See Forms C-H.

Drawer (Principal Obligor).
First Indorser.
Second Indorser.
Third Indorser, etc.

90. Accepted Bill of Exchange or Draft; Order of Liability Among Themselves. See Forms C-H.

Acceptor (Principal Obligor).
Drawer.
First Indorser.
Second Indorser, etc.

91. Check (not accepted and not paid); Order of Liability Among Themselves. See Form A.

Drawer.

Indorsers in their order.

(Except in Illinois, Nebraska, Kentucky, Iowa, and South Carolina the holder of a check cannot enforce it against the bank if for any reason or whim the bank does not choose to pay it. In such cases the holder must look to the drawer, who is the only one who can bring an action against the bank.) 124 U. S. 385: 57 Mich. 255: 100 Ind. 515: 83 Mo. 337: 134 N. Y. 368: 68 Ill. 398: 26 Iowa 315: 31 Neb. 107.

92. **Accepted Certified Check; Order of Liability.** If the holder of the check procures it to be certified the drawer and all of the indorsers are released,—the bank is then the principal and only obligor. 94 U. S. 345: 117 Ill. 106: 52 N. Y. 350: 156 Mass. 458. See Form G.

93. The reason for this is, the holder in presenting the check was entitled to demand the money for it, and, in legal effect, had promised the drawers and indorsers that he would present it promptly and demand the cash. Now, if instead of demanding cash when he was entitled to do so, he took the bank's acceptance, he has released all other parties to the check.

94. But if the maker before putting the check in circulation has it certified, then the order of liability is:

Bank.

Drawer.

Indorsers in their order. 160 Mass. 401.

95. **Surety.** All of the parties to commercial paper are in a sense sureties for the principal obligor, but they are not usually sureties in the technical application of the term.

96. The strict surety is, in every-day business, a practically obsolete

party to commercial paper. His name, when it does appear, usually appears on the face of the paper below that of the maker, and to his name he usually adds the word "surety."

97. The obligation of the surety is stricter than that of the indorser. The indorser says, in legal effect, "My contract is separate and distinct from that of the maker or principal obligor; I had nothing to do with the original making of this paper. My contract was made subsequently, and it provides, with other provisions, that you must protest this instrument at its maturity or I am released." The indorser is in no sense a partner with the maker in his liability.

98. The strict surety always becomes a party to the paper at the inception of the debt,—before the first delivery of the paper. He says, in legal effect, to the holder, "While this debt is not my original obligation, I agree that you shall bind me in all respects as firmly as you do the maker. I have added the word 'surety' to my name, so that if any question arises in the future between the principal obligor and myself, or our estates, it will clearly appear that as between ourselves he is to pay all of this debt."

99. The obligations of the surety and of the indorser differ in that the indorser warrants to his indorsee, the holder, that the instrument is regular and legal in every respect, and that notwithstanding the fact that the maker has a perfect defense to it and that it cannot be enforced against him, he, the indorser, will pay it. On the other hand, the surety assumes no more liability than does the principal, and if the principal has a defense to the instrument the surety can have the same defense; but, as before stated, the indorser warrants to the future holder that the maker or principal obligor has no defense to it. 66 Conn. 65: 54 Ia. 79: 48 Pa. St. 345: 32 Ind. 309: 3 Denio 70: 18 Pick. 98.

100. Guarantor. A guarantor, as well as a surety, is an intruder on commercial paper: he has no fixed status as to liability. See Form O.

101. His contracts must be written in terms above his name, and what is there written will determine his liability.

102. The word " guarantor " has no fixed meaning and liability as have the words " indorser," " acceptor," " drawer," etc.

103. If one indorses commercial paper, and thus becomes an " indorser," the courts will not hear him when he attempts to explain what he meant by the indorsement or what liability he intended to assume. The law says, " What the legal intention and effect of your indorsement is was established centuries ago,—you cannot change or qualify it by what you meant or what was said "; and the same rule applies to one who accepts or draws commercial paper.

104. The word " surety " has also quite a fixed meaning, although not so inflexible a one as that of " indorser," " acceptor," or " drawer." But the contract of a guarantor may be limited or enlarged by the contract that is written above his name; and the contract must there be written and in words that will express just what liability he has undertaken. The law will not spell out or make a liability beyond the one expressed in those words.

105. " A guarantor is a favorite of the law." Wherever his name appears on negotiable or non-negotiable instruments the law allows him to stand on the precise wording of the guaranty written above his name.

106. The reason given for this is that he is usually a volunteer to the contract,—has no financial interest in it, has had no benefit from it, and expects none,—and, therefore, he will not be bound except to the precise contract that he signed.

107. Holder. The holder of commercial paper is under some obligations to the parties thereto if he retains their liability. See Forms A to H, Secs. 26, 51-54, 56-59, 150-151, post.

108. The holder of a promissory note should have it presented at the place of payment on the day of its maturity.

109. The maker or drawer of the note will remain liable thereon if payment is not then and there demanded, but failure to so present,—and in case of non-payment to protest,—will forever release the indorser.

110. The holder of a check must have it promptly presented for payment and protested or the indorsers will be released. See Form F.

111. The drawer or maker of a check will be released from liability if presentment for payment is not promptly made, if the bank should fail and the depositor should lose the money against which the check was drawn.

112. But delay in presentation to the bank will not release the drawer or maker if by the delay his money has not been lost to him.

113. The bank remains liable for the money which the check calls for regardless of any delay in the presentation of the check.

114. But unless the bank accepts or certifies the check, it owes no duty to the holder which the holder can enforce against it. (But there are exceptions to this rule in Illinois, Nebraska, and some other States.) Sec. 187, sec. 62, post.

115. If the bank refuses payment to the holder his remedy is against the drawer or maker, who, in drawing the check, has, in legal effect, promised that the bank will pay it, and if it does not that he will.

116. The holder of a bill of exchange owes it to all of the parties thereto, except the drawee, to have it promptly presented to the drawee *for acceptance*, and in case of non-acceptance to have it protested for non-acceptance, and if this is not done all of the parties except the drawee are released. (There are exceptions to this rule when the day of payment of the bill is not a given time *after sight*.)

117. When the day of payment arrives the bill must be presented for payment and protested for non-payment or all the parties except the acceptor will be released.

119. If the bill has been properly protested for non-acceptance it need not be presented and protested for non-payment.

120. **Who May Issue Commercial Paper.** Any male person of full age who is sane or who is not under guardianship may bind himself as a party to negotiable instruments.

121. **Business Corporations,** through their officers properly empowered, can usually bind themselves as parties to commercial paper,

but, unlike individuals, they cannot make or indorse paper simply for the accommodation of others. Sec Nos. 87, 4, 5, 6, 7, 8, 38, 30, 31, 29, 32, 66.

122. Minors. Minors do not bind themselves by becoming parties to commercial paper, and it cannot be enforced against them, no matter what benefits have come to them by reason thereof.

123. Women. Women cannot hind themselves as parties to commercial paper except in States where they are empowered to do so by special statutes.

124. Partners. Each member of a trading partnership has implied authority to sign, indorse, or accept commercial paper in the firm name for the purposes of the partnership business.

125. The presumption is that paper so signed is for the business of the partnership unless there is something on the face of the paper that would indicate otherwise.

126 Trading Partnerships. There is no distinct line that can be drawn between trading and non-trading partnerships. Practically all manufacturing and mercantile partnerships are trading partnerships.

127. Partnerships between lawyers, doctors, architects, etc., for the practicing of their profession would not be trading partnerships, and this has been held to include real estate agents, insurance agents, and publishers, and such non-trading partnerships do not have implied power to issue or indorse commercial paper.

128. Delivery. Commercial paper binds the maker only from the time he voluntarily parts with possession of it with the intention that it be delivered to the payee or the party intended by the maker to put it in circulation. It is a nullity until that time, and if it be taken from the maker before that time it is worthless even in the hands of an innocent purchaser.

129. But if after its delivery it was stolen from the payee or a sub-

sequent owner, and it then came into the hands of an innocent purchaser, he could enforce it against the maker for his own benefit.

130. This rule as to delivery applies to the liability of an indorser;—and if the payee or subsequent owner of a note should write his name on the back thereof with intention to negotiate the note, and before he had voluntarily parted with possession of it an innocent purchaser bought it, such purchaser could not enforce it against such indorser, although he could enforce it against the maker and any previous indorsers.

131. **Negotiation.** The negotiation of the instrument is the act or acts by which the ownership and complete title are passed from the owner to another, and in such a manner as to preserve the negotiability of the paper.

132. This is done by the owner voluntarily parting with it with intention that it pass to another; and, if the instrument is payable on its face or by an indorsement on the back to his order, by his indorsing it. Such indorsement may be by writing his name in blank on the back of this note (a blank indorsement) or by writing above his name on the back the words "Pay to the order of (A. Adams),"—(an indorsement in full—or special indorsement).

133. If the instrument is payable to bearer,—either originally or by subsequent indorsement,—the negotiation is complete without any further indorsement by the one who is transferring it,—it can be negotiated then by mere delivery. See Forms L, A, B, C, K, J.

134. **Consideration.** In order to bind the maker, drawer, indorser, or acceptor of commercial paper there must have been a consideration for the drawing, making, indorsing, or accepting of the paper.

135. But when the instrument is in the hands of a bona-fide purchaser this does not mean that the maker, drawer, indorser, or acceptor necessarily received some consideration for the obligation he entered into or that the consideration was full or valuable to him.

136. It sufficed as a consideration that the holder, seeing their names or any of them on the paper, paid something of value for it, or

put himself to some risk or disadvantage on the strength of their names—and the risk or disadvantage may have been as to matters wholly disconnected with the paper or the parties whose names appear thereon.

137. It is thus seen that the question of consideration is not one that enters largely into the negotiation of commercial paper. Such question usually arises between the maker and the payee of the note;—and those parties in actions between themselves do not have many of the special advantages of the laws particularly applicable to commercial paper.

138. If the consideration for the instrument arose wholly or in part out of some illegal transaction no part of the instrument can be enforced, even if the obligor received ample consideration.

139 This has been held as to notes given for money to be used in gambling; for the profits or losses in gambling speculations in stocks or products which come under the name of futures or options; for liquor sold in violation of law; for the suppression of a criminal prosecution.

140. But such notes are usually good in the hands of a purchaser without knowledge of the consideration.

141. It is only in a few States that an instrument fair on its face is declared void in the hands of a bona-fide purchaser for the reason that the consideration or the transaction is in violation of law.

142. In New York State a note out of which the original holder took, or agreed to take, more than the legal rate of interest is utterly void, even in the hands of an innocent purchaser, but this law does not apply to instruments to which a bank or banker was the original holder.

143. Consideration-Gift. The defense of "no consideration" often comes up where commercial paper is made the subject of a gift.

144. Where the maker executes and delivers his own note to the donee. as a gift, the note cannot be enforced by the recipient or by any one who has knowledge that the consideration was a gift.

145. But where the donor delivers commercial paper made by a third party to the donee the latter, or one who takes title from him, can hold it and enforce it.

146. The donor's own check as a gift is not effective until paid, and the donor can revoke the gift and stop payment at any time before the check is transferred or paid.

147. The donor's own note or check, as a gift, becomes ineffectual on his death; but not so the commercial paper of a third party which has been properly delivered before death. Where the commercial paper of another is made the subject of a gift, the gift must be perfected before the death of the donor,—the recipient of the gift must have come into full possession and control of the paper during the life of the giver.

148. A gift to take effect after the death of the giver, the giver to retain possession and control of the property during life, is ineffectual no matter how fully it can be proved,—unless such gift is the part of a regularly executed will.

149. **Inception.** An instrument does not have its inception until the maker has executed it and parted with possession of it with intention that it be put in circulation, and until some one has taken it for a legal consideration; it is at this last point that it has inception.

150. **Release of Parties.** Payment of commercial paper or its voluntary surrender to the principal obligor, by the holder, will discharge all parties to it. An unintentional surrender or cancellation will not release the principal obligor, nor will it release the other parties if their rights or remedies have not been prejudiced thereby.

151. A release of security controlled by the holder or a compromise with the principal obligor will release all of the other parties

152. A release of one indorser will release all those who have indorsed under him,—but not those who have indorsed above him or who are liable by reason of their having written their names on the face of the paper.

153. An enforceable agreement to extend the time of payment to

the principal obligor will release all of the other parties who did not agree to it. This agreement need not be a direct one, and it is a source through which many indorsers are unwittingly discharged from all liability. Sec. 120, post.

154. When the debt has matured the holder cannot extend the time of payment one day even to the maker or principal obligor without releasing the indorser.

155. The maker may wait. He may refrain from taking any steps whatever against any of the parties to the paper; he may fold his hands, and thus let the parties gain time, but he must not affirmatively grant it.

156. In a few States the holder must proceed against the maker in the courts at the first term of court after the maturity of the paper: but in a majority of the States the holder owes no active duty to the indorser. If the indorser is in a hurry he can take up the paper and sue the maker or prior indorsers. See No. 123.

157. The holder of an indorsed note must not, after the maturity of the note, take interest to a future time, but he may accept partial payments of principal or interest that have accrued.

158. He must not make any bargain or enter into any transaction by which the maker or principal obligor can show that the holder's right to proceed against him has been suspended for a day.

159. Any party to past-due commercial paper can pay the amount due thereon to the holder and demand a delivery of the paper to himself; and after he has come into possession of it he can enforce it to its full amount against any party whose liability precedes his.

160. Such action by any party to the instrument discharges all parties whose liability is subsequent to his.

161. But in that event he has lost nothing, as no indorser can ever gain any benefit or contribution from parties whose liability is subsequent to his.

162. Protest. The protesting of a dishonored instrument,—an act which is performed by a notary public, but which under certain circum-

stances can be performed by an individual, is an act done to prevent the release of the indorsers of all negotiable instruments and also the drawers of bills of exchange, as such parties are discharged if the instrument is not protested. Sec. 112, post.

163. On the day of the maturity of all negotiable instruments, and on the day when a bill of exchange should be presented for acceptance, the notary, with the instrument in his possession, must present it at the place where it is drawn payable, and demand acceptance or payment, as the case may be,—and on failure to receive payment thereon, he is required to notify, by mail or in person, the indorsers and drawers, of the non-payment, and make some formal entries of his official acts.

164. If no place of payment is mentioned in the instrument it must be presented at the place of business of the person required to pay,—the drawee of the bill or the maker of the note, and if there is no such place of business then at his residence. If the instrument be lost the notary may make the demand by copy or description.

165. There is only one day on which the presentment and demand of payment and formal protest can be made,—the last day of maturity of the instrument. See page 50.

166. Contribution. Where several parties have signed a note under the implied or express agreement among themselves that each shall be liable for only his proportionate share thereof, and the holder of the note is not a party to the agreement, he can collect the full amount from any one of them, and such one can then force proportionate contribution from the others. If some of the others are insolvent the solvent ones must bear the whole loss share and share alike. See Forms U, H.

167. Time. A negotiable instrument that is silent as to time of payment, is payable on demand, without grace, and must be presented for payment forthwith and protested, if the indorsers (or the drawer of a bill of exchange) are to remain liable thereon.

168. On Demand. An instrument written payable "on demand," is payable forthwith and must be presented as above.

169. At Sight. An instrument payable "at sight," is payable as is one written payable on demand, and must have the same prompt presentment. In a few States negotiable instruments written payable at sight are entitled to grace.

170. Months. Where an instrument is payable a certain number of months after date, calendar months are meant.

171. A note dated February 20, payable in three months, is due May 20.

172. Where an instrument is payable so many months after date, calendar months are meant. Thus a note dated January 31, payable one month after date, is due the last day of February. A note dated February 28, payable in eleven months, is due January 28. Where days are expressed, Sundays and holidays are included, and in the computation the day of date is excluded and the whole of the last day is included. A note dated May 28, payable in sixty days, is due July 27.

173. Days. Where the payment is a certain number of days after date, the actual number of days is computed, including Sundays and holidays.

174. In the computation the day of date is omitted and the payor has all of the last day in which to make payment.

175. An instrument dated May 20, payable in 90 days, in States where grace is not allowed, is due August 18. Thus:

Days in May after May 20th.....	11
Days in June.....	30
Days in July.....	31
Days in August to make the whole number 90..	18
	90

176. In computing time the law does not contemplate fractions of days.

177. Inconsistent Dates. Where two dates are given, one the day of the week and one the day of the month, and they are inconsistent, the day of the month will govern.

178. Holidays. Time instruments falling due on Sunday or a holiday are payable the next business day, and this rule applies to Saturday where Saturday is a half-holiday.

179. The holder of a check or an instrument payable on demand may present it for payment during business hours of a Saturday half-holiday, but failure so to do is not negligence on his part. This is the rule as to commercial paper.

180. Other private contracts which would fail if not performed on a date certain, and that day is a holiday, must be performed on that day.

181. This rule does not of course apply to Sundays, in which case performance can be made on Monday.

182. Grace. Except in States where the rule has been changed by special statute, a negotiable instrument payable at a future time is not due and payable until the expiration of three additional days following the time of maturity as expressly stated in the instrument. These three days are termed "days of grace."

183. They came into the law at a time when the means of transportation and communication were indirect and uncertain.

184. They are gradually being abolished, by statute, in the several States, but in many they yet prevail.

185. In such States, if a negotiable instrument is written payable ninety days after date, it is not due until ninety-three days after date, and if the time of payment is specifically fixed by drawing the instrument payable at a fixed future date, as "July 20th, 1903, pay," etc., the instrument is not due until July 23d.

186. Accommodation Paper. Accommodation negotiable instruments, or indorsements thereon, are those made by one person for the accommodation of another.

187. This in no way affects their validity as negotiable instruments

when they are in the hands of third parties, even if such third parties know that the paper was made or indorsed solely as an accommodation.

188. But corporations cannot bind themselves as makers, indorsers, or acceptors of accommodation commercial paper. Sec. 29, post.

189. Neither can one partner bind the firm to such paper; but if all of the partners consent, then the firm is bound.

CHECK.

Form A.

All technical requirements of a negotiable instrument, hereinbefore mentioned, must be observed in issuing and negotiating checks.

190. Check. A check differs from a bill of exchange or draft in that it is always drawn on a bank, banker, or banking institution, and in that it is always payable on demand, and in that it always purports to be drawn against a deposit of funds. The negotiable instruments law says "a check is a bill of exchange drawn on a bank payable on demand." Sec. 185.

191. The fact that the instrument is drawn by one bank on another makes it no less a check, even if drawn in the usual form of a bill of exchange or draft.

192. Post-dated Check. If an order in the form of a check is dated ahead it is treated as a bill of exchange, except that it is never entitled to grace. Except as the foregoing definition from the negotiable instruments law may have changed the rule where that law is in force.

193. But it is held that if a date of payment is indicated in the body of the check, it is entitled to grace in States where grace is allowed on negotiable instruments.

194. Death of Drawer. The death of the drawer usually revokes the authority of the bank to pay the check, and it has been held that bankruptcy or an assignment for the benefit of creditors has the same effect.

195. Check Not An Assignment. A check does not operate as an assignment to the holder of the amount of the depositor's money that it calls for, and if the bank refuses to pay it the holder has no right of action against the bank,—his remedy is against the drawer,—the latter

is the only person who has right of action against the bank. See Form A.

196. This is the rule in most of the States, and the Negotiable Instruments Law so provides. Sec. 189.

197. For Georgia and Texas see the statutes of those States.

198. Thus, although banks should pay checks in the order of their presentation, they need not do so, and the drawer is the only one that can legally complain if they do not.

199. Duty of Holder. Presentation. So far as the drawer of the check is concerned, the holder need not present the check within a reasonable time, and the drawer will continue liable for the amount unless he can show actual loss or damage by failure of the bank, or otherwise.

200. But in order to hold the indorser the check *should* be presented the day it is delivered to the payee,—and it *must* be presented by the following day,—if the payee lives in the same place as the location of the bank. See Form F.

201. If the bank is in another place, the payee must start it for collection not later than the time of the last mail of the day succeeding the day he received it, and the bank that receives it on this second day must forward it that day.

202. To send it for collection through various banks or parties in various places is deemed negligence, if the time of presentation is thereby delayed.

203. If the check is sent to an agent for collection, he is bound to present it on the day of its receipt, if received in business hours.

205. Sundays and holidays are not counted as days under this rule.

205. Partial Payments. A bank is not bound to make partial payment on a check if the depositor has not enough funds to make payment in full.

206. Payment Stopped. At any time before a bank has accepted a check it must not pay it if the maker stops payment.

207. Certified Check—Liability of Parties. If the bank accepts or cer-

ies the check at the request of the payee or his successors in title, the drawer and the indorsers are thereby released and the bank becomes the only one liable for its payment. See Form G, No. 75.

208. But this is not the rule if the drawer procures its acceptance *before* its delivery to the payee.

209. **Verbal Acceptance.** A verbal acceptance or certification will bind the bank if the drawer has funds on hand sufficient to pay it. 59 Barb. (N. Y.) 226: 118 Mass. 539: 75 Ill. 505: 46 Conn. 90: 18 Wall (U. S.) 604: 30 N. H. 256: and this is so held as to certification by telegraph. 51 Fed. 168.

210. **Forgery.** A bank in certifying or paying a check cannot be heard to complain against an innocent party if the drawer's signature is forged; the loss in such cases falls on the bank. See Form G.

211. But a bank in paying or certifying a check does not warrant the genuineness of the body of the check or of any of the indorsements thereon,—on the contrary, the person presenting the check for payment warrants these matters to the bank, whether he indorses the check or not. See No. 75.

212. **Payment Rescinded.** If a bank once pays a check to the holder without fraud on his part, it cannot recover the money on the ground that it paid under a mistake as to the amount standing to the drawer's credit.

213. But it is held that by simply giving a depositor credit for the check, on his pass book, without more, the bank can rescind the credit any time that day if the credit was made under mistake as to the condition of the drawer's account. 51 Cal. 64. Text-writers and some courts hold to this doctrine.

214. The New York courts seem to hold to the contrary. 45 N. Y. 741. See No. 127.

215. **Certified Check.** A bank in certifying a check says, in legal

effect, to the bona-fide holder thereof, "The signature of the drawer of this check is genuine, and if it turns out to be forged it is our loss, not yours; the drawer has enough money here to pay it, and we will retain the money and apply it for that purpose only, and if we should fail so to do we, nevertheless, will pay the check; but if it should develop either before or after the actual payment of the check that the amount has been fraudulently raised,—*either before* or after our certification,—we will pay only the amount it was originally issued for; and if we have paid more than the latter you will have to make good the difference. Further, we have said and warranted to you that the signature of the drawer was genuine (that we are supposed to know), but we do not know anything about the genuineness of the signatures of the indorsers on the check, and you, in asking for this certification, or for subsequent payment thereunder, have said, in law, to us that the indorsers' signatures are correct, and if they are not that you will make good to us any loss by reason thereof." 18 Wall (U. S.) 604: 64 N. Y. 316: 67 N. Y. 458: 67 Ind. 500: 42 Ill. 245: 30 Md. 11: 16 N. Y. 125.

216. A bank is not bound to know the genuineness of the signature of the indorser, but it is held that if it certifies the check without any indorsement on it, it will have to pay it to the bona-fide holder, and procure the indorsement, if necessary, as best it may. 107 N. Y. 183. See Form G, No. 75.

217. The certification of a check dated ahead does not bind the bank. 52 Barb. (N. Y.) 592.

218. An officer cannot certify his own check and bind the bank thereby. 25 N. Y. 294.

219. The president, cashier, or teller may certify. 114 N. Y. 70: 25 N. Y. 293: 110 U. S. 7.

BILL OF EXCHANGE.

Form C.

All technical requirements of a negotiable instrument, hereinbefore mentioned, must be observed in issuing and negotiating bills of exchange.

220. Bill of Exchange. A bill of exchange is an order drawn by one person on another directing the payment on demand or at a future time of the sum of money therein mentioned.

221. Inland—Foreign Bills. An inland bill of exchange in the United States is one drawn in one State and payable in that State.

222. A foreign bill is one drawn in one State and payable in another State or another country.

223. Consideration. It is usually drawn against commodities sold and delivered, or about to be delivered by the drawer to the drawee, but this is not necessarily so.

224. It is not usually drawn against a deposit of money, but it may be, and it may also be drawn and accepted as an accommodation by the drawee to the drawer without any consideration passing. It will be valid in either instance.

225. Order of Liability. Until a bill of exchange is accepted the drawer is as between the parties, the person primarily liable on it, and the liability of the indorsers follows in the order in which they appear on the bill. See Forms C, H.

226. After its acceptance the acceptor becomes the person primarily liable and the drawer's liability follows, and then the indorsers in their order.

227. This is the rule as to the persons whose names appear on the

bill, but the holder does not have to recognize this order of liability. He may proceed against any or all of them irrespective of their liability among themselves, or the order in which their names appear.

228. Warranty of the Parties. The drawer warrants to the indorsers and to the holder that the drawee will accept and pay, and if the drawee does not, that he, the drawer, will pay if the bill is duly and properly presented and protested.

229. Each indorser warrants the same to the holder and to each subsequent indorser—but not to the maker.

230 The drawee is bound to know the drawer's signature, and if it is forged he has no recourse against an innocent party.

231. The holder warrants the signature of the indorsers, and this warranty does not cease on the payment of the instrument.

232. Duty of Holder—Protest. The duty of the holder of the bill is to forward it without delay for acceptance by the drawee, and after acceptance to have it duly presented for payment. If the drawee refuses to accept, or if he accepts and refuses to pay, the drawer and indorsers must in each instance be notified of the fact and the bill duly protested or they will be released from all liability.

233. The drawers or makers of a note are not released if they are not notified of its dishonor,—not so the drawers or makers of the bill of exchange or draft.

234. Acceptance. The holder of the bill or draft, or his agent, must demand an unconditional, unqualified acceptance of the draft,—an acceptance that does not vary the time or place of payment, nor the amount, nor the terms of the bill in any particular. See Nos. 5, 17, 18 19, 105, 110.

235. The acceptance should be in writing and signed by the drawee.

236. It is usual to have it written on the face of the bill, but it is sufficient if it appear anywhere thereon. No particular words or phrases are necessary. It is usual to write "Accepted,"—followed by the date and the name of the acceptor.

237. It is said that the holder need not accept an acceptance signed by an agent of the drawee,—that he can demand the drawee's own signature.

238. The bill is often accepted before it leaves the drawer's hands, but this is in no way prejudicial to it.

239. Time to Decide. A drawee has twenty-four hours after a bill is presented to him in which to decide whether he will accept or not; but this time provision does not apply to checks or instruments payable on demand and not requiring acceptance.

240. Where such time is taken, the acceptance, if dated, must be dated as of the day of presentation.

DRAFT.

Form D.

241. Draft. The word draft is indiscriminately applied to checks, bills of exchange, or to non-negotiable orders for the payment of money.

242. This application of the word is not entirely erroneous, but it is more correctly applied to instruments in the form of bills of exchange, that are drawn for the purpose of collecting for the *drawer's own use and account* sums of money due him from sundry persons.

243. If the drawer procures money on draft before it is paid it becomes, technically, a bill of exchange.

244. The payee of the draft is usually the person or institution delegated by the drawer to make the collection, and it is delivered or sent by mail to the payee for that purpose. Banks or express companies usually perform this service, making a small charge therefor.

245. The drawer often places such drafts with his bank for collection; but in many instances the drawer draws them payable to some bank in the place where the debtor lives, and mails them to such bank with the request that the bank collect and remit the amount less collection charges.

PROMISSORY NOTE.

Form B.

All technical requirements of a negotiable instrument, hereinbefore mentioned, must be observed in issuing and negotiating promissory notes.

246. Promissory Note. A negotiable promissory note is an unconditional written promise made by one person to another, signed by the maker, in which the maker engages to pay on demand or at a fixed determinable future time a sum certain in money to bearer or to order.

PROTEST.

The protesting of a dishonored instrument—an act which is performed by a notary public, but which under certain circumstances can be performed by another person—is an act done to prevent the release of the indorsers of all negotiable instruments and also the drawers of bills of exchange and checks, as such parties are discharged if the instrument is not protested, when protest is required.

On the day of the maturity of all negotiable instruments, and on the day when a bill of exchange should be presented for acceptance, the

notary, with the instrument in his possession, must present it at the place where it is drawn payable, and demand acceptance or payment, as the case may be,—and on failure to receive acceptance or payment thereon, he is required to notify, by mail or in person, the indorsers and drawers of the demand and non-payment, and formally protest the instrument.

If no place of payment is mentioned in the instrument it must be presented to the place of business of the person required to pay,—the drawee of the bill or the maker of the note, and if there is no such place of business then at his residence. If the instrument is lost it can be presented and protested by copy or description. The demand should be made personally of the party required to pay or accept, and if he be not present, then of some person in charge of the office or premises. If no person is present the demand can be made of "to whom it may concern."

The notary must then, that day, note on the instrument the fact that on that date he had protested the instrument for non-acceptance or non-payment, as the case may be. Then, and in any case not later than during business hours of the next day or not later tha he last outgoing mail of such day, notice of demand, non-paymen r non-acceptance and of protest must be mailed to each of the pa s to the instrument. If affixed to any name is a post-office address e notice must be mailed, post paid, to that address. If no address is en, then inquiry must be made as to the business place or residence (ie parties and the notice sent there. If no address can be found, a nc e for such party or parties must be mailed to the owner or last indo r. Where there is doubt as to the post-office address of a party, it is tomary, as a precautionary measure, to mail several notices at diffe t places or enclosed to different persons. If any of the parties are ad, inquiry must be made as to their personal representatives and n e be sent to such representatives, and if no personal representative found notice must be sent to the last residence or place of business of e deceased.

There is no particular form of notice required,—it i only necessary that it conveys information sufficient to acquaint the par of the demand

and nor yment of the particular instrument. It will be sufficient to have the tice read, for instance: "Canisteo, N. Y., Sept. 1, 1902. N. C. Taylo Canisteo, N. Y. Please take notice that a promissory note made by otson & Vorhis, dated July 1, 1902, due this day, for one thousand lars, and indorsed by you, has this day been protested for non-paym and that the holders look to you for payment thereof, payment of th ame having been duly demanded and refused. John D. Moore, No r Public." Notice of protest can be delivered personally, and oral noi may be sufficient.

At any bsequent time the notary issues a certificate of protest under his hand and seal, to which is attached the instrument or a copy thereof or both.

The certificate must specify the time and place of presentment, the fact of presentment and the manner thereof, the cause or reason for protesting the bill, the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

Protest may be made by: A notary public, or by any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. Sec. 154.

LAW.

The rules d methods by which society compels or restrains the action of its members.—Bouv. Law Dict.

Those principles, usages, and rules of action applicable to the government and security of persons and property, which do not rest for their authority upon any express and positive declaration of the will of the legislature.—1 Kent Comm. 492.

England.—The common law of England consisted of certain maxims, principles, and forms of legal proceedings which, from long usage, and custom had become interwoven with written laws, and which had for a long time been administered by the courts as the law of the land.

While the common law was and is an unwritten law in the sense of which we speak of a legislative statute, the "common sense" and the maxims, principles, and usages which went to make up the common law did not and do not become a part of the common law until they have received continual judicial sanction, and they thus, through the printed decisions of the courts, have become written laws, although the term "written law" does not generally apply to them.

United States.—The common law of England became, generally, the common law of the original colonies, and is so to-day in the several States except as it has been changed by statute or by the decisions of the highest courts of the several States. Such decisions really constitute the law of the State as to the points and matters decided by them.

"Among the first acts of the Continental Congress, which assembled in Philadelphia on September 4, 1774, was the adoption of a declaration of rights, affirming 'that the respective colonies were entitled to the common law of England, and the benefit of such English statutes as existed at the time of their colonization, and which they had by experience respectively found to be applicable to the local and other circumstances.

"'S h parts of the common law of England and of the statute law of Englar and Great Britain, and of the acts of the legislature of the colony of ew York, as together did form the law of the said colony on the 19th of April, 1775,' were made and continued the law of the State by its first Constitution. Const. 1777, Sec. 35." New York.

STATUTE LAW.

The law created from time to time by acts of legislatures.

Where statute law conflicts with the common law, the latter is, during the life of the statute, a nullity.

COURT.

A body in the government to which the public administration of justice is delegated. Coke, Litt. 58 a. Courts are the machinery through which ws are interpreted and enforced.

Each of the several States enacts its own laws.

Each of the several States has its own courts. The decisions of the courts of one State are absolutely binding only in that State. The United

States courts have control and jurisdiction in each of the States in matters relating only to the general government; they have no jurisdiction and control over controversies between citizens of the same State; but where citizens of different States have legal controversies, either side to the litigation may generally insist that the case be tried and disposed of in the United States courts,—and this whether the matter in controversy is or is not one in which the United States laws are in question. It thus has sometimes happened that at different times the same question has been decided one way in a certain State in a litigation in its State courts, and another way in another litigation in the United States courts sitting in that State. Each of such conflicting decisions is decisive and conclusive as to the precise litigation then and there before such court; but thereafter the decision of the State court on that question becomes the judicial law of that State on that question, and in its bearing on subsequent lawsuits *in that State* it is the higher law, and overrules the decision of the United States courts.

The Supreme Court of the United States has, generally, no control or jurisdiction over the courts of the several States except in cases where the violation of the Constitution of the United States is in question. A State court may wholly ignore a decision of the United States Supreme Court except as to questions involving the Constitution or the statutes of the United States.

The court system is practically the same in all of the States, and one brief outline will give a general idea of the course of a lawsuit in any State.

In the State of New York, if one person have a grievance against another, and he desires the courts to pass on it, he states his grievance to a lawyer, who reduces it to a formal written "complaint" which is formally served on the other party to the proposed litigation. If the latter party chooses to contest the matter, he employs a lawyer who serves on the first party a formal written "answer" to his complaint. The matter is then taken up at a "Trial Term" of the Supreme Court of the

State, and both parties and their witnesses are heard by twelve jurors and one judge. A decision is then and there rendered. If either party is dissatisfied with such decision he can make formal appeal, and a record of the trial is taken to the "Appellate Division" of the Supreme Court, where the case is argued before five Supreme Court judges. At this argument no jurors are present; no witnesses are heard; no new evidence is allowed. The five judges render a decision saying whether the decision of the court below was right or wrong.

If either side is dissatisfied with this last decision, he can appeal to the Court of Appeals (a court of last resort), where the case is finally passed on by seven judges. No new evidence is taken nor any witnesses are heard in this court; the case is there argued and decided on a printed record of what took place in the lower courts.

If no answer is made to the first written complaint, judgment is entered for the amount of money claimed to be due, and the sheriff seizes on the property of the defaulting debtor and sells it to satisfy the judgment. And if from any of the decisions made by the different branches of the court during the litigation no appeal is then taken, a judgment is entered, as above, and the same procedure by the sheriff follows.

This general form of procedure applies to the United States courts.

A.

CHECK—USUAL FORM.

This check is drawn payable to the order of Wm. Carpenter, and thus bears evidence that Carpenter is the owner of it; and until he writes his name on the back thereof, it is not negotiable. If any person should advance the money on it without the indorsement of Carpenter, or if the bank should pay it without his indorsement, it would be at their peril.

No. 384 New York, January 3 1902.

NINTH WARD BANK
(DRAWEE)

Pay to the order of Wm B. Carpenter
(PAYEE)

Nine hundred twenty-four and 36/100 Dollars

$924.36/100

Wm Butler
(DRAWER OR MAKER)

FRANCIS BOND

Wm. R. Carpenter

Ira Cutler, in the mere act of issuing this check, has said, in legal effect, to Wm. R. Carpenter, "I have an open account in the Ninth Ward Bank, and there are sufficient funds there to my credit, and not drawn against, to pay the amount it calls for; and if you will present it at the bank promptly and it is not paid, I will pay it personally." If Cutler has not at the time of issuing the check sufficient funds at the bank to pay it, and he knows it, and it is not paid, he has committed a fraudulent act for which he can be punished.

The bank in the mere act of opening an account with Cutler has, in legal effect, said to him, "We will, so long as you have sufficient funds to your credit, pay your checks drawn on us and your notes and bills exchange that you have made payable here if presented when due; but if your account has not enough to its credit to pay the full amount of an order when presented, we reserve the right to decline to make any partial payments on such item."

This check being drawn payable to the order of Wm. R. Carpenter, he must indorse it before he can draw the money on it. He has indorsed it, and in doing so and receiving the money on it he has said, in legal effect, to the bank, "I believe the signature of Ira Cutler to be genuine, but if it should prove to be a forgery, it is your loss not mine. Every thing else about the check, date, amount, &c., I guarantee to be regular and not altered."

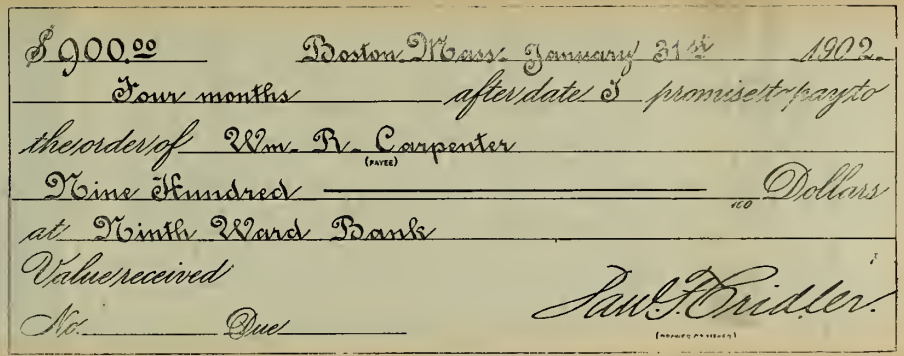
Carpenter's indorsement as above is a "blank indorsement;" it is equivalent to his saying "pay the amount to bearer."

These rules apply to notes, checks, drafts and bills of exchange.

B.

PROMISSORY NOTE—USUAL FORM.

This oote is drawn payable to the order of Wm. . Carpenter, and thus bears evidence that he is e owner of it; and until he writes his name on e back thereof, it is not negotiable, and a pur- ser would take it at his peril.



Pay to the order of
Barney W. Short.
Wm. R. Carpenter.
Barney W. Short

Danl. F. Cridler in issuing this note has agreed with Wm. R. Carpenter, and also with any subsequent holder of it that he will pay it when it is due, and if he has any property that a process from the courts can reach, the law will enforce the promise if he fails to voluntarily make it good. But he commits no fraud in issuing and not paying the note, even if at the time he issued it he had no reasonable hope of being able to pay it. He has made the note payable at the Ninth Ward Bank, and in so doing has instructed the bank to charge it to his account when due, and the bank must do so without further instructions, if his account is good for it on the day it is due.

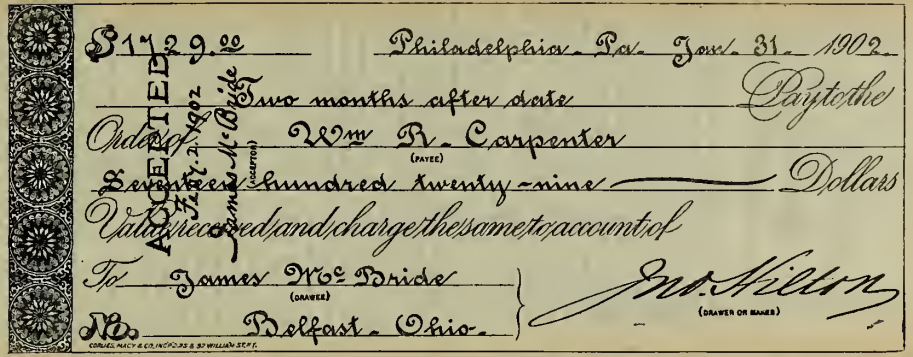
Carpenter has sold this note to Barney Short, and in doing so has indorsed it by an "indorsement in full." He has thereby said, in legal effect, "I own this note; the signature of Cridler and every other part of the note is correct in every respect and if it is not paid when it is due I will pay it in spite of any irregularity there may be in it or about it, if you have it properly protested for non-payment." If Short indorsed the note and sold it he would make the same warranty. If Short simply indorsed it and presented it to Cridler for payment he would only, by his indorsement, warrant that he was the owner of it and that the signature of Wm. R. Carpenter was genuine.

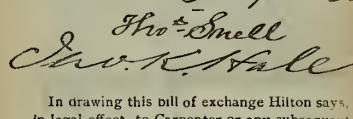
These rules apply to notes, checks, drafts and bills of exchange.

C.

BILL OF EXCHANGE—USUAL FORM.

This bill is drawn payable to the order of Wm. R. Carpenter, and thus bears evidence that he is the owner of it and will continue so to be until he writes his name on the back of it. McBride, the drawee, can *accept* it without Carpenter's indorsement, but he would pay it after acceptance at his peril without such indorsement.





In drawing this bill of exchange Hilton says, in legal effect, to Carpenter or any subsequent holder: "If you will present this bill to McBride he will accept and will pay it, and if he does not I will pay it, if it is properly protested non-payment or non-acceptance, or both." Hilton's promise is of the same nature as that of Cridler in illustration "B." He has committed no fraud if McBride should not accept or should not pay. His property is liable to be seized for the non-fulfillment of his promise, but not his person.

McBride is under no legal obligation to accept the draft eveo if he is indebted for that amount or more to Hilton. The law will compel his property to pay his debt when it is due, but it will not compel to accept drafts of his creditor.

When McBride accepts or pays the bill he is bound to know, at his peril, that Hiltoo's signature is genuine; but whoever presents the bill to McBride for acceptance or payment warrants to McBride that the indorsers' signatures are genuine, and that amount has not been raised, and that face of the instrument is in every other respect the same as when it left Hilton's hands.

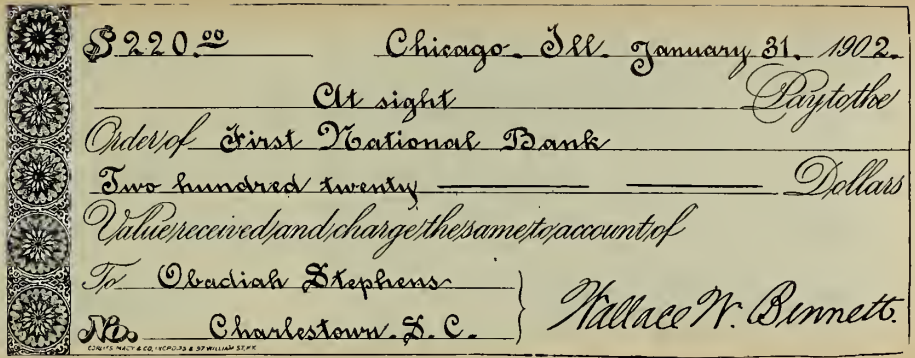
Each indorser has, in the act of indorsing, said to each *subsequent* indorser or holder: "I will pay this bill for the amount it called for when I indorsed it, no matter if the amount was raised or if the signatures of Hilton or McBride or previous indorsers are forged."

These rules apply to notes, checks, drafts and bills of exchange.

D.

DRAFT—USUAL FORM.

The term draft is indiscriminately applied to ecks, bills of exchange, or any order for the pay- t of money,—and such application of the term ot wholly erroneous; courts recognize the fact the word has no precise commercial paper nition. If the drawee of this draft was a bank, instrument would be strictly a check,—if pay- on demand. The term applies usually to ruments for the collection of money due or pas- ,—not to an instrument made to discount or



This draft is drawn on a resident of South Carolina. In that State sight drafts are entitled to three days' grace, hence the draft is not due and payable until three days after it has been accepted. Stephens can, if he chooses in accepting it, make it payable at any specific place in Charlestown, but not outside of that city. If the holder allowed him to accept it payable outside of that city, it would be deemed an alteration of place of payment (as it is drawn payable in Charlestown) and Bennett and any indorsers would be thereby released. If Stephens accepted the draft by merely writing his name across the face of it, not indicating a specific place of payment, it would be deemed payable, first, at his place of business in that city, and if he have no place of business there then at his residence there if he has one. This rule as to place of payment applies to promissory notes where the maker has indicated no special place of payment. The drawee of a draft has twenty-four hours from the time which it is presented to him to decide whether he will accept it or not, but if he decides at once not to accept it and declines so to do without asking for the twenty-four hours the instrument should be protested at once.

This rule applies to notes, checks, drafts and bills of exchange.

E.

INDORSER: INDORSEE:
"INDORSEMENT IN FULL:"
"SPECIAL INDORSEMENT:"
NOTICE OF OWNERSHIP

No. 27 New York, Feb. 3 1902.

NINTH WARD BANK
(DRAWER)

Pay to the order of Wm. B. Carpenter
(PAYEE)

Two hundred twenty ——— 100 Dollars

$ 220.00

Wm. W. Ellard
(DRAWER OR MAKER)

CRANE'S BOND

Pay to the order of
James Clark (Indorsee.)
Wm. R Carpenter.
(Indorser.)

Pay to Frank Smith
or order (Indorsee.)
James Clark
(Indorser.)

The same person may be the indorser and the indorsee of an instrument.

In the above indorsements, Frank Smith would be called the indorsee of James Clark as distinguished from other indorsers, and James Clark would be called Frank Smith's indorser.

The above indorsements are termed "special indorsements," or "indorsements in full."

Until this check was indorsed by Carpenter, it bore evidence that it was the property of Carpenter! After he indorsed it, and before Clark did, it bore the same evidence that it belonged to Clark.

If Frank Smith presented this check for payment at the bank he would be required to indorse it. A proper form of indorsement at that time would be a "blank indorsement," as follows:

Frank Smith.
(Indorser.)

In so indorsing an instrument that is due, and is then and there presented for payment to the person bound to pay, Smith does not assume many of the liabilities of an indorser. His indorsement does not mean that he will return the money if the drawer's account is not good. It is evidence that he has surrendered title to it, received the money, etc., and that he was warranted the regularity of it, except as to the signature of the drawer. — Judd McClelland.

These rules apply to notes, checks, drafts and bills of exchange.

LIABILITY OF PARTIES TO A CHECK: WHEN IT SHOULD BE PRESENTED FOR PAYMENT.

No. 859 New York, Feb. 3 1902.

NINTH WARD BANK
(DRAWEE)

Pay to the order of Wm. B. Carpenter
(PAYEE)

One thousand five hundred ——— Dollars
100

$1,500.00

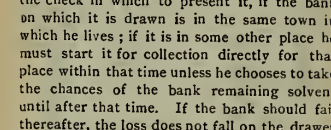
CRANES BOND

Dewight W. Cormack
(DRAWER OR MAKER)

The drawer or maker of this check is liable on it whether presented to the bank or not, unless the bank should fail with the money there, or unless he could show some direct loss by reason of its not being presented.

Wm. R. Carpenter, the payee, has until the close of business of the day after he receives the check in which to present it, if the bank on which it is drawn is in the same town in which he lives ; if it is in some other place he must start it for collection directly for that place within that time unless he chooses to take the chances of the bank remaining solvent until after that time. If the bank should fail thereafter, the loss does not fall on the drawer of the check.

If Carpenter indorses it thus :



he becomes liable to Paul as indorser, if Paul presents the check the day he receives it, or the next day, or starts it directly for collection within that time. If Paul chooses to send the check to some distant place to pay a debt or for any other purpose, and presentation is thus delayed, Paul's indorser, Carpenter, is thus released.

The check can be indorsed and transferred time and again. but each indorser is only liable to his indorsee as stated above.

Former indorsers would be released by successive transfers which delayed presentation. Interruptions of the mail or transportation facilities — or unforseen or untoward circumstances which cause delay may relax the rigidity of the rule

G.

CERTIFIED CHECK:
LIABILITY OF BANK:
LIABILITY OF MAKER AND INDORSERS

No. 749 New York, Feb. 3 1902.

NINTH WARD BANK
(DRAWEE)

Pay to the order of Wm. P. Carpenter
(PAYEE)

One thousand ——— 100 Dollars

$1000.00

CERTIFIED FEB. 4 1902 Wm. A. Clark CASHIER

[illegible] BOND

W. J. Reynolds
(DRAWER OR MAKER)

Wm R Carpenter.
Cornell Cornell.

By accepting or certifying this check the bank becomes absolutely liable for its payment to any holder, except the maker.

If a holder of the check procures it to be certified, the maker and all indorsers are thereby released, and the bank becomes the only party liable on it. But this is not so if the maker procures it to be certified, he is then liable to indorsers and holders to the same extent as he would be if it had not been certified.

A bank in certifying a check cannot complain against an innocent party if the makers signature is forged; but any party who presents a check to be paid warrants the genuineness of the indorsers signatures, even if he does not himself indorse the check,—and such warranty does not end when the check is paid.

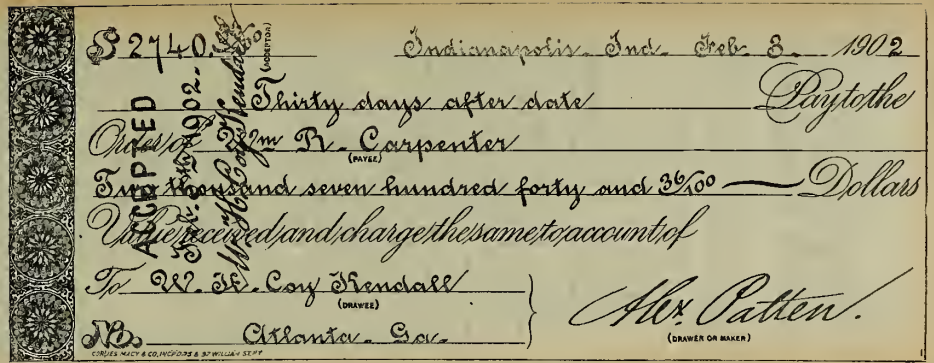
The indorser or person who presents the check for acceptance or payment, warrants that the amount has not been raised—and this warranty does not end with its payment.

A bank in certifying a check does not warrant that it has not been raised—See Illustration No. 64.

These rules apply to notes, checks, drafts and bills of exchange.

H.

BILL OF EXCHANGE: DRAFT: LIABILITY OF PARTIES.



$2740.

Indianapolis, Ind. Feb. 8, 1902

Thirty days after date Pay to the

Order of Wm R. Carpenter (PAYEE)

Two thousand seven hundred forty and 36/100 Dollars

Value received and charge the same to account of

To W. H. Coy Kendall (DRAWEE)

No. Atlanta, Ga.

Alx. Patten. (DRAWER OR MAKER)

ACCEPTED Feb 10 1902 W. H. Coy Kendall (ACCEPTOR)

CORLISS MACY & CO. INCORPORATED 87 WILLIAM ST. N.Y.

Wm R Carpenter
Mack Cameron

The order of liability, *among themselves*, o the parties to this instrument is:—

1. Acceptor: W. H. COYKENDALL.
   Drawee:
2. Drawer: ALEX. PATTEN.
   Maker:
3. First indorser: WM. R. CARPENTER.
4. Second indorser: MACK CAMERON.

Of course, Coykendall's liability would not accrue if he had refused to accept the bill.

While this is the order of liability among themselves, the holder can proceed against any one of them or all of them for the whole amount. If any one of the above parties has to pay the bill he can force payment from any one above him, in the above given order, but not from any one below him.

Coykendall could not complain to an innocent party if Patten's signature was forged—he is bound to know the drawer's signature. But one who procures Coykendall to accept or pay the bill, warrants the genuineness of the indorsements—and that the bill is genuine in other respects.

These rules apply to notes, checks, drafts and bills of exchange.

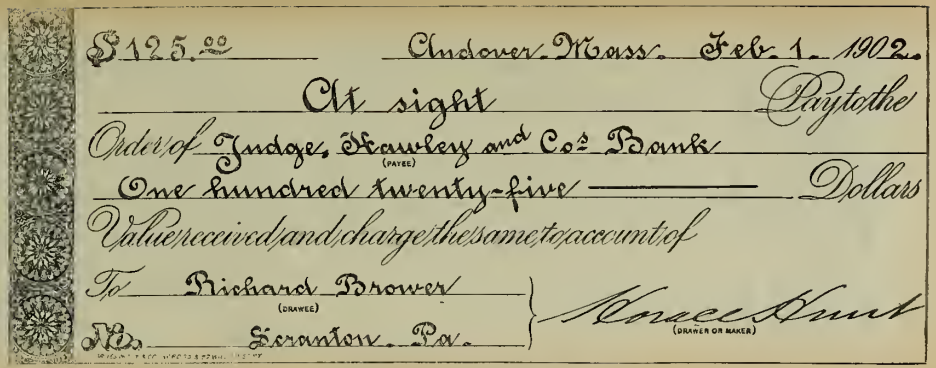
If Coykendall had refused to accept the bill the order of liability would be:

ALEX. PATTEN.
WM. R. CARPENTER.
MACK CAMERON.

!

FORM OF DRAFT WHERE THE CREDITOR WISHES TO DRAW ON THE DEBTOR.

The payee might be the bank at which the depositor keeps his account, or any express company with whom the draft is left for collection, or it might be the bank where the debtor lives and to whom the creditor has enclosed the draft by mail, with the request that such bank collect the draft and remit proceeds.

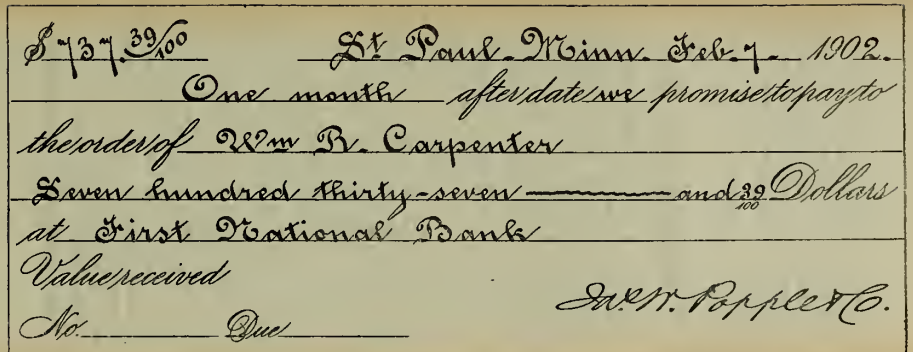


This draft is drawn on a person in Pennsylvania, and in that State sight drafts are not entitled to grace. The drawee is therefore not entitled to accept it; it is payable on demand and he must pay or decline to pay on presentation.

This rule applies to notes, checks, drafts and bills of exchange.

5.

BLANK INDORSEMENT. HOW CHANGED TO SPECIAL INDORSEMENT



$737.39/100 St. Paul, Minn. Feb. 7, 1902.

One month after date we promise to pay to the order of Wm B. Carpenter

Seven hundred thirty-seven and 39/100 Dollars

at First National Banks

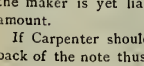
Value received

No. _____ Due _____

W. M. Popplet & Co.

This note, payable "to order, bears, until it is indorsed, notice that it is the property of Wm. R. Carpenter. And if it is lost or stolen and paid by the maker without Carpenter's indorsement, or with his forged indorsement, the maker is yet liable to Carpenter for its amount.

If Carpenter should write his name on the back of the note thus —



this would be a blank indorsement, and be evidence that Carpenter had parted with title to the note, and thus make the note payable to bearer, and would make Carpenter liable for the payment of the amount of the note *to any subsequent holder* thereof, if the note was protested for non-payment and Carpenter had due notice thereof.

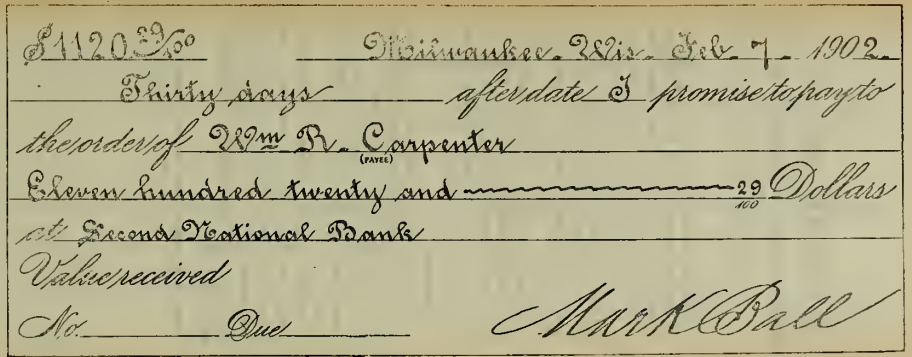
No subsequent indorsement of the note by any one, in any manner, could make this again a note payable to order. But any holder of the note has the right to write above Carpenter's signature, the words "Pay to the order of, (inserting the holder's name) and the note is then payable to such person and cannot be further negotiated without his indorsement— it would then be a note payable "to order."

This note is drawn or made by a firm. Each member of a mercantile, manufacturing or trading partnership has implied authority to sign and indorse paper in the firm name for the uses of the firm business, and such signature will bind not only the firm property, but also that of the individual members thereof. This rule does not apply to non-trading firms, such as law, medical or other professional partnership. Nor does it apply where it is known by the holder that the firm name was used simply as an accommodation for others. In such case the person who signs the firm name is the only one who is bound by the firm signature.

These rules apply to notes, checks, drafts and bills of exchange.

K.

SPECIAL INDORSEMENT
INDORSEMENT IN FULL
ORDER OF LIABILITY.



$1120.29/100 Milwaukee Wis. Feb 7 1902

Thirty days after date I promise to pay to

the order of Wm B. Carpenter (PAYEE)

Eleven hundred twenty and 29/100 Dollars

at Second National Bank

Value received

No. Due Mark Ball

(OWNER OR MAKER)

Pay to the order of
Harmon Bennett
Wm R. Carpenter.

This "indorsement in full," or "special indorsement," is notice that Harmon Bennett is the owner of this note and that it cannot be further negotiated without his indorsement. He can indorse it in blank and thus make it negotiable by delivery, or he can transfer it to another by indorsement similar in form to above, and this process and transfer can go on without limit.

Each indorser is liable to the holder of the note; and the holder may pick out any one, irrespective of where his name appears on the note, or the order in which it appears, and enforce payment of the amount of the note from such indorser.

When an indorser pays the note he can pursue any or all indorsers *above* him, but not *below* him — and make them reimburse him.

Any holder of the note or indorser can, of course, always enforce the note against the maker.

The maker has no recourse on the indorser, except that each indorser warrants to the maker of the note, or any holder of it, that indorsements prior to his are genuine as to signature, if their genuineness is or becomes a material feature.

These rules apply to notes, checks, drafts and bills of exchange.

L

NOTE PAYABLE TO BEARER:
INDORSEMENT OF SUCH NOTE.
SPECIAL INDORSEMENT:
RESTRICTIVE INDORSEMENT

$370.75/100 Memphis Tenn. Feb 2 1902.

Three months after date I promise to pay to

Wm R. Carpenter or bearer
(PAYEE)

Three hundred seventy and 75/100 Dollars

at First National Bank

Value received

No. Due

David S. Ryno
(DRAWER OR MAKER)

This note is payable to "bearer," and no indorsement *of any kind* by Carpenter or any subsequent holder can make it a note payable "to order." The title to it passes by mere delivery. But if Carpenter or any subsequent holder wrote his name on the back of the note he would be liable as indorser.

If Carpenter or any holder should write an indorsement on the back of this note in general form as follows —

Pay to the order of
S. F. Curry
W. R. Carpenter

this would be termed an "indorsement in full" or a "special indorsement,"— but it would not restrict the transfer of the note — it is yet payable to bearer.

Or if Carpenter or any holder should indorse in the following manner:

Pay only to F. Colegrove
for collection for
my account.
W. R. Carpenter

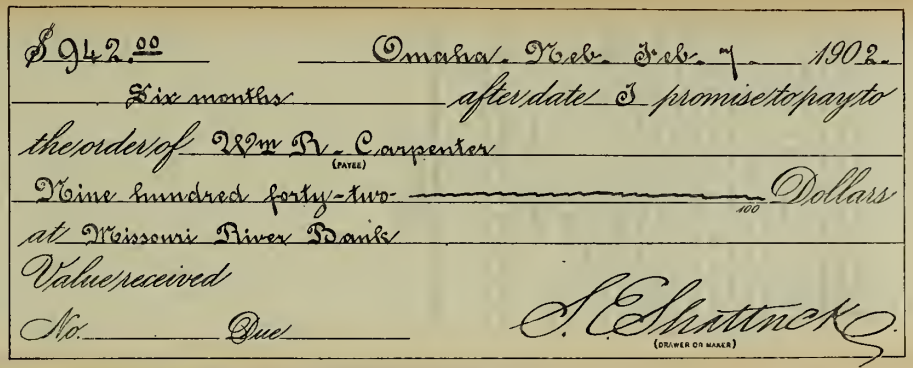
this would be termed a "restrictive indorsement," but it would not restrict the negotiation of this particular instrument — it would be yet payable to bearer — but these rules do not apply, of course, to instruments originally payable "to order."

These rules apply to notes, checks, drafts and bills of exchange.

In Illinois a negotiable instrument payable to "A or bearer" requires the indorsement of A. This has been held in Alabama, Arkansas and Missouri, but such indorsement is not required elsewhere.

M.

RESTRICTIVE INDORSEMENT:
NDORSEMENT "WITHOUT RECOURSE.



$942.00 Omaha, Neb. Feb. 7 1902.

Six months after date I promise to pay to

the order of Wm B. Carpenter
(PAYEE)

Nine hundred forty-two 00/100 Dollars

at Missouri River Banks

Value received

No. Due

S. E. Shattuck
(DRAWER OR MAKER)

If there should appear anywhere on this note, *either as a first* indorsement, or *after other* indorsements had been written thereon, a restrictive indorsement in form as follows —

"Pay to the order of B. F. Wiggins to be applied on my account" (or for deposit to my account,) (or for collection and credit) or any other restrictive terms, the negotiation of the instrument as a "negotiable instrument is stopped, and no indorsement that B. F. Wiggins can give it can change this fact. The owner has by signing such indorsement given notice to the world that he owns the note, and that B. F. Wiggins, *or any one to whom Wiggins may assign it*, holds the note as an agent to collect it, but not to sell it.

If any indorser writes above his name the words

"Without Recourse,"

he relieves himself of any liability to any person on the note or any holder thereof.

These rules apply to notes, checks, drafts and bills of exchange.

N.

IRREGULAR INDORSEMENT.

$700.00 Baltimore Md. Feb. 1 1902.

One year after date I promise to pay to

the order of Wm R. Carpenter (PAYEE)

Seven hundred 100 Dollars

at First National Bank

Value received

No. Due

Hall Davis (DRAWER OR MAKER)

Nat. C. Chadwick

This note is drawn to illustrate an error often occurring where, as in this case, Carpenter, the payee, was to give Davis, the maker, the money on the note if Davis would procure Chadwick to indorse his, Davis' note.

In such cases the instrument should name Nat. C. Chadwick as payee, and he should indorse the note thus:

Pay to the order of
Wm R. Carpenter
Nat. C. Chadwick

This note is not invalid as now drawn, but it is irregular. In many states Chadwick would be called a co-maker, or a surety.

If Carpenter wishes to indorse and transfer the note as now drawn, he could write his indorsement under that of Chadwick. But even if it was written above Chadwick's—Carpenter could hold Chadwick as first indorser if he could show the facts as to the making of the note.

If one or more persons were to join Chadwick as accomodation indorses for Davis in procuring the money of Carpenter, they can all be named as payees—thus showing without further proof that they are equally liable among themselves as indorsers. If they were not all named as payees and one indorsed above the others, as they have to, it might require proof to show that that the last indorser was equally liable with the others, as among themselves.

This rule applies to notes checks, drafts and bills of exchange.

O.

INDORSEMENT BY GUARANTY
GUARANTY

$676 42/100 New Orleans. La. Feb. 6. 1902.

Four months after date I promise to pay to

the order of Wm R. Carpenter
(PAYEE)

Six hundred seventy-six and 42/100 Dollars

at Union National Bank

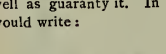
Value received

No. Due

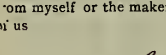
Andrew J. Liggett.
(DRAWER OR MAKER)

A question sometimes arises as to whether a guaranty written on a negotiable instrument does not destroy its negotiability, so as to leave it open to the set-offs and defences of the maker.

That point can be covered by having the payee or transferee indorse the instrument as well as guaranty it. In this case Carpenter would write:



For value received I hereby guaranty the payment of this note to any holder thereof, together with any costs or disbursements incurred in attempting or enforcing collection from myself or the maker of the note, or both of us



The above guaranty is a strong one. Just what a guarantor guarantees is to be read from the words written above his name. The word "indorser" has a meaning of its own, and an indorser's liability has been fixed for centuries and is unchangeable; but if a contract of guaranty is written above ones name he can stand on the very letter of that contract as written.

Where one writes his name on commercial paper as maker, indorser or acceptor, he is deemed to have assumed the liability fixed by law and which attaches to the position in which his name appears, and he cannot thereafter prove by oral evidence what was said at the time in order to make a different liability, or say that he put his name there with the understanding that his liability was to be different from that which the law attaches to the position of his signature.

This rule applies to notes, checks, drafts and bills of exchange.

P.

CORPORATE SIGNATURE AND INDORSEMENT.

$667.00 Atlanta, Ga. February 16 1902.

Three months after date, The Standard Fence Co promises to pay to the order of The Carpenter Mills Co (PAYEE)

Six hundred sixty-seven 100 Dollars

at First National Bank

Value received

No. Due

The Standard Fence Co

by Joel F. Monrhess.

Treasurer

(DRAWER OR MAKER)

87

The Carpenter Mills Co.
By Wm R Carpenter
Treasurer

This note drawn by a corporation to the order of a corporation, is correctly signed and indorsed so as to bind the corporations, and not the officers signing and indorsing.

The corporate signatures signed on the face of this note and indorsed on its back are in proper form to bind the corporation and not the officers signing the name. A quite common error in such signatures is: "Joel F. Mourhess, Treasurer," or "Wm. R. Carpenter, Treasurer of The Carpenter Mill Co." Such signatures are usually held to bind Mourhess or Carpenter individually and not the corporations.

Business corporations have implied authority to make and indorse commercial paper for the uses of their business, but not as an accommodation for other parties. The authority to issue and indorse paper is in the board of directors, and none of the officers can bind the corporation in so doing except by authority from the board of directors, and third persons are bound to inquire for such authority before relying on such officers' signatures.

These rules apply to notes, checks, drafts and bills of exchange.

Q.

SIGNATURE BY AN AGENT.

$700.00 Portland Me. Feb. 19. 1902.

One month after date I promise to pay to

the order of Wm R. Carpenter
(PAYEE)

Seven hundred 100 Dollars

at Northern National Bank

Value received

No. Due

Maurice Fitz
By Wm Van Etten
Agent.

(SIGNATURE OF MAKER)

This note is properly signed by an agent for his principal, so as to bind the principal and not the agent.

A signature thus:

"THOMAS VAN ETTEN,
Agent for Maurice Fitz,"

binds the agent Van Etten individually — and not the principal, Fitz.

The fact that a person is "agent" for another is not much proof that such agent has authority to or can bind the principal by signing or indorsing the principal's name to commercial paper. In fact the presumption is that he cannot so bind the principal, and prudent persons will usually require written proof of such authority.

Where such authority is given it will not authorize the agent to use the principal's name for the accommodation of the agent or of third parties, unless it is so specifically provided. An agent with authority to collect and receipt for money due his principal cannot, under such general authority, indorse the principal's name on checks given in payment of such accounts.

These rules apply to notes, checks, drafts and bills of exchange.

R

ENDORSEMENT "WITHOUT RECOURSE"

$ 770.00 Bald Hill Va. Feb 3 1902.

One year after date I promise to pay to the order of Wm B. Carpenter (PAYEE)

Seven hundred seventy ——— 100 Dollars

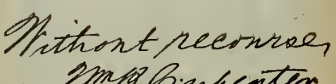
at Second National Bank

Value received

No. ——— Due ———

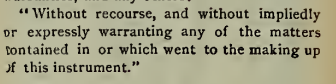
Simeon P. Whitcomb

(DRAWER OR MAKER)



This is termed an "indorsement without recourse." Its intent is to relieve the indorser from any liability in connection with the note. It does relieve him from warranting in any way the *solvency* of any of the parties to the note. But if he has received a proper consideration for the note he warrants that it is regular on its face; that all of the signatures are genuine; that it has not been altered in any way; that no payments have been made on it that are not indorsed; that the maker is not a minor, or if he is that he will not plead that fact. By using the following form he can avoid all of these warranties, and any others:

"Without recourse, and without impliedly or expressly warranting any of the matters contained in or which went to the making up of this instrument."



These rules apply to notes, checks, drafts and bills of exchange.

S.

INDORSEMENT "PROTEST WAIVED"

$1100.00 Bennetts Creek, Conn. Feb. 3. 1902.

Six months after date I promise to pay to

the order of Wm B. Carpenter
(PAYEE)

Eleven hundred ——— ——— 100 Dollars

at Loder Street Bank

Value received

No. ——— Due ———

Nat. C. Chadwick
(DRAWER OR MAKER)

Presentment, demand, notice, and protest waived.

Wm. R. Carpenter.

An indorsement as above dispenses with the necessity of protesting the note to hold Carpenter as indorser.

Presentment, demand, and notice of protest waived, and consent given that the time of payment of this note may be extended from time to time without notice to me, and without prejudice to my liability as indorser.

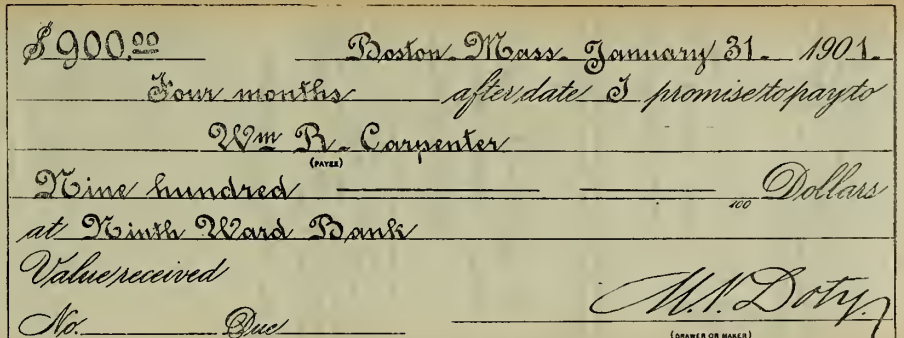
Wm. R. Carpenter

An indorsement as above will retain Carpenter's liability as indorser, if the time of payment of the note is extended. If such extension is made without his consent he is released.

This rule applies to notes, checks, drafts and bills of exchange.

1.

NOTE PAYABLE TO C.—NOT TO "C. OR ORDER" NOR TO "C OR BEARER" INDORSEMENT OF SUCH NOTE.



$900.00 Boston Mass January 31 1901.

Four months after date I promise to pay to

Wm B. Carpenter
(PAYEE)

Nine hundred ——— ——— 100 Dollars

at Ninth Ward Bank

Value received

No. ——— Due ———

W. H. Doty
(DRAWER OR MAKER)

This note is drawn payable to Wm. R. Carpenter — not to his "order," nor to him "or bearer": It is, as to the maker, a non-negotiable instrument, and will always remain so. But if Carpenter should write on it:

Pay to the order of
Julius Cohn
Wm R Carpenter

he would incur, as to Cohn, the liability of an indorser; and if Cohn should write on the note·

Pay to the order of
John Barton
Julius Cohn

ne, Cohn, would incur the liability of an indorser to Barton. The courts are not in accord as to whether, *on a note drawn on its face as is this one*, Carpenter would incur, as to Barton, the liability of an indorser, but it is generally held that he would not.

This rule applies to checks, drafts and bills of exchange.

U.

The holder of this note can collect the full amount, $3,500, from any one of the three signers. As between themselves each one is liable for one-third—unless there is a special contract to the contrary; and if one has paid the full amount he can compel each of the others to contribute one-third, and if one of the two is insolvent the solvent one must contribute one half. The rule would not be changed if the promise read "I" promise, &c., instead of "we" promise, &c. This note as drawn is a "joint" note as distinguished from a "several" note. The principal distinction between such notes is that in bringing an action on a joint note all of the makers have to be joined in one action, while on several note any of the makers may be sued alone. If the promise in this note read "I" instead of "we" the note would be a "several" note although signed by two or more parties. If the promise read "we or either of us," the note would be both joint and several. 13 N. H. 385; 100 Mich. 339.

$3500.00 Milwaukee, Wis. Feb. 20 1902.

Sixty days after date we promise to pay to the order of Wm. R. Carpenter

Thirty-five hundred ~~~~~ 100 Dollars

at First National Bank

Value received

No. Due

Lauman A. Ward.

Wm Penne W.

Mac A Brown.

(Indorsement in full.)

Pay to George F. Wheaton or order.

Wm R Carpenter

(Indorsement in blank.)

George F Wheaton

(Qualified Indorsemeot.)

Without recourse

Fred S. Nicholz.

(Conditional Indorsement.)

Pay Geo. W. Terry or order on the completion of the Pine Creek Road.

P. Wm Scott

(The makers of this note can pay, if they choose, regardless of whether the above condition has been fulfilled or not.)

(Restrictive Indorsement.)

Pay Fanny Prentiss or order for collection for my account.

Geo. W. Terry

The last two indorsements destroy the further negotiation of the note as a negotiable instrument.

This rule applies to notes, checks, drafts and bills of exchange.

ILLUSTRATED IRREGULAR PAPER

IN CONNECTION WITH

THE UNIFORM NEGOTIABLE INSTRUMENTS LAW

Where a statute is intended to embody in a code a particular branch of the law, and has specifically dealt with any point, the law on that point should be ascertained by interpreting the language used, instead of doing as before the statute was passed — roaming over a vast number of authorities in order to discover what the law is and extracting it by a minute, critical examination of prior decisions. Lord Bramwill, in Bank vs. Vogleano, App. Cas. 107, 144.

TITLE I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE I.

FORM AND INTERPRETATION.

Sec. 1. Form of Negotiable Instrument. An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;

2. Must contain an unconditional promise or order to pay a sum certain in money;

3. Must be payable on demand, or at a fixed or determinable future time;

4. Must be payable to order or bearer; and

5. Where the instrument is addressed to a drawer, he must be named or otherwise indicated therein with reasonable certainty.

Cf. secs. 2, 3, 4, 7 and 9.

NO. 1.

NEGOTIABILITY.

McMASTER'S COMMERCIAL CASES,
1907, PAGE 204A,
117 APP. DIV. (N. Y.) 572.

$1,059.19 New York, N.Y.

February 3rd, 1905.

As per verbal agreement made between Mr. John Fulton, Jr. and our Mr. Varney, we hereby agree to pay you the sum of $1,059.19 ninety days from date; this amount to be paid out of our profits on the 3 East 40th Street job.

George A. Varney
Jacob Vestal
Christopher Feller

Neg. Insts. Law, sec. 20, clause 2, says: The instrument "must contain an unconditional promise or order to pay a sum certain in money." Sec. 22, clause 2, says: "But an order to pay out of a particular fund is not unconditional." The paper * * * is not a negotiable instrument. This instrument provides as follows: "This amount to be paid out of our profits on the 3 East 40th Street job." Being, therefore, a promise to pay out of a particular fund, it is not unconditional. (34 App. Div. 294.) Further, it is not payable to order or to bearer as required by sec. 20 of the Neg. Insts. Law."

McMASTER'S COMMERCIAL CASES,
PAGE 214A,
117 APP. DIV. (N. Y.) 572-574.

NO. 2.

PARTNERSHIP: FIRM NAME: PARTNERSHIP NOTE.

Where one partner seeks to bind the firm by a note, the precise firm name must be used in the signature.

166A, VOL. 1, McMASTER'S REVERSED CASES: 61 S. W. REP. 505.

$2,500.00 Laporte, Texas, June 13, 1898.

Twelve months after date, we promise to pay to the order of Mansfield and Root

Twenty-five hundred Dollars

at Bank of Laporte

Value received

No. Due Mansfield & Root

CO FU CELRALCY B COLLECTION CO'S, 20 NASSAU ST. N.Y.

Mansfield v. Root

H. P. Mansfield and W. R. Root were partners in the banking business, doing business under the name, as provided in their written articles of partnership, of the "Bank of Laporte." The notes, checks, drafts, etc., of the bank were headed "Bank of Laporte, Mansfield and Root," and the signature to their drafts was often in that style, although usually one of the partners signed as cashier or assistant cashier.

Mansfield, without the knowledge or consent of Root, borrowed for his own use $4,000, giving therefor a note signed "Mansfield & Root." The note was not paid and Root was sued. In the trial much of the evidence and argument was on the point as to whether, under a partnership of this nature, one partner could bind the other by a note signed in the partnership name.

The appellate court did not pass on this point, but released Root for the reason that he could not be bound, if at all, by any note that his partner could make, unless the note was signed in the partnership name. The partnership name was the "Bank of Laporte," the note was signed "Mansfield & Root."

186 A, VOL. 1, McMASTER'S REVERSED CASES.
61 S. W. REP. 605

Sec. 2. **Certainty as to Sum; What Constitutes.** The sum payable is a sum certain within the meaning of the Act, although it is to be paid:

1. With interest; or

2. By stated instalments; or

3. By stated instalments with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or

4. With exchange, whether at a fixed rate or at the current rate; or

5. With cost of collection for an attorney's fee, in case payment shall not be made at maturity.

Nebraska and **South Dakota** construe clause 5. Clause 3 is slightly varied in the law of **Idaho**, **Iowa**, **Minnesota**, **North Carolina** and **Wyoming**.

NO. 3.

WITH EXCHANGE.

Indorser not liable when the words "in New York Exchange" are used.

McMASTER'S COMMERCIAL CASES.
1906, 2A.
104 N. W. 369.

$435. Arco, Minn., June 21st 1902

November 1st after date WE promise to pay

Smith & Zimmer or order, the sum of

Four hundred and thirty five Dollars,

with exchange and collection charges at First State Bank of Tyler, Minn. with interest from Mat. at the rate of 8 per annum until paid.

Pederson Bros.

Smith & Zimmer

This instrument is a sharp illustration of the fact that slight additions to the wording of an apparently negotiable instrument will relegate it to the realm of ordinary contracts, and also that one who writes his name on the back of an instrument which is for any reason nonnegotiable is not an indorser and does not assume an indorser's liability. Such an instrument in the hands of a bona fide holder is yet subject to all of the counterclaims and defenses that the maker would have if it was in the hands of the original holder. It does not pass from hand to hand, as does commercial paper, free from undisclosed equities of the maker or previous holders. It was therefore decided that the supposed promissory note was not a promissory note but a simple contract for the payment of money an instrument which could not be protested, an instrument that one did not constitute himself an indorser of by writing his name on the back thereof. This same court had previously held that while the words "with exchange" or "with New York exchange" did not render an instrument non-negotiable; that an instrument payable "in New York exchange" would be non-negotiable, as it could be or must be paid — not in money — but in a check or draft on New York. The court said, in part: "It is an essential condition of a promissory note that there is no uncertainty as to the amount it calls for at any particular time. If the promise be to pay a stated sum, plus or minus an indefinite amount, it is not a promissory note. . . . We, therefore, hold that the instrument here in question is not a promissory note, but a contract for the payment of money, and that the indorsement thereof by the payees did not create the liability which follows from the indorsement of negotiable instruments."

McMaster's Com. Cases, Vol. 1906, 104 N. W. 369.

Sec. 3. **When Promise is Unconditional.** An unqualified order or promise to pay is unconditional within the meaning of this Act, though coupled with:

1. An indication of a particular fund, out of which reimbursement is to be made, or a particular account to be debited with the amount; or

2. A statement of the transaction, which gives rise to the instrument.

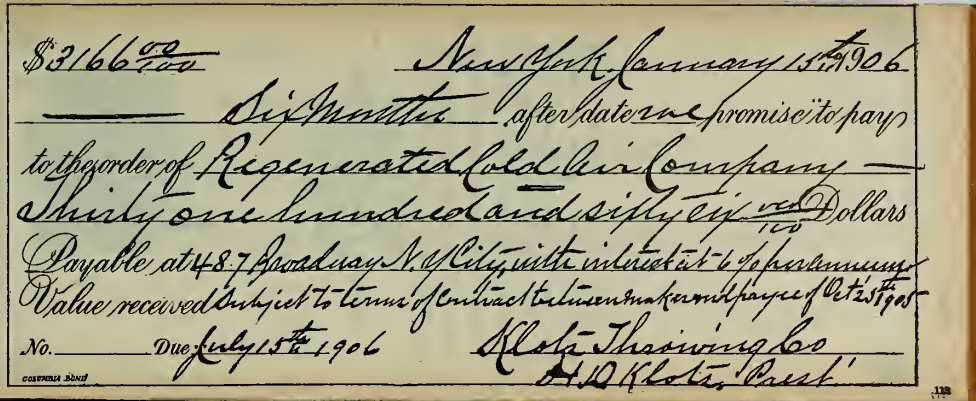
But an order or promise to pay out of a particular fund is not unconditional.

NO. 4

NEGOTIABILITY.

Conditional when instrument made subject to the terms of another contract.

McMASTER'S COMMERCIAL CASES, 1911, PAGE 45A, 179 FED. 813.



$3166 70/100 New York January 15th 1906

Six Months after date we promise to pay to the order of Regenerated Cold Air Company Thirty one hundred and sixty six 70/100 Dollars Payable at 487 Broadway N. Y. City, with interest at 6 % per annum Value received Subject to terms of contract between maker and payee of Oct 25th 1905

No. Due July 15th 1906

Klotz Thrasing Co

H. O. Klotz, Pres't

COLUMBIA BOND

In this note the words "subject to terms of contract" were held to render the promise conditional and, therefore, the note was non-negotiable. This differs from the interpretation given to such expression as "given for machinery as per contract." Such words are held to be mere statements of the consideration and do not destroy negotiability.

(See Decision No. 1317.)

McMASTER'S COMMERCIAL CASES.
1911. PAGE 45A.
179 FED. 813.

No. 5.

ACCEPTANCE:
DRAFT ON SPECIAL FUND.

Draft on special fund, held to be non-negotiable and not binding the acceptor individually.

McMASTER'S COMMERCIAL DIGEST,
PAGE 225A,
16 N. Y. 251.

$2000. Starkey N.Y. January 26, 1900.

Mr. Harrison Shannon Pay to

the order of Messrs Wilkin & Hair

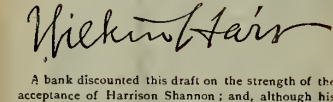
Two Thousand Dollars

and deduct same from my share of profits in our Walking business

D. L. Gulick

Harrison Shannon

Jacob Lee



A bank discounted this draft on the strength of the acceptance of Harrison Shannon; and, although his acceptance was in itself unconditional, it did not bind him as there were no profits going to the drawer of the draft. This draft was drawn on a special fund, *i. e.*, profits of a certain business.

McMASTER'S COMMERCIAL DIGEST,
PAGE 225A;
61 N. Y. 251.

"A bill is an order drawn by one person on another to pay a third a certain sum of money, absolutely and at all events. Under this definition the order cannot be paid out of a particular fund, but must be drawn on the general credit of the drawer. Whatever is said of a bill here is equally applicable to a promissory note. Under this rule an order drawn payable "out of one's growing subsistence" is not a good bi" (Josselyn v. Lacier, 10 Mod. 294); nor one payable "out of rents" (Jenney v. Herle, 2 Lord Raym. 1361); nor out of money in the hands of ——; "nor out of a certain payment when due." The direction in the case at bar is equivalent to an order to pay out of the profits. It is to deduct the amount paid from the drawer's share of "the profits." This is equivalent to a direction to subtract the amount from a particular fund. If the language had been, "Please pay Wilkes & Hare $2 000 out of my share of the profits of the partnership," it would have been a clear case of assignment and not a bill of exchange. The actual direction was in substance the same. Cook v. Satterlee (6 Cow. 108) is in point. The words there were: "Ninety days after date pay plaintiff or bearer $400, and take up their note given to Wm. & H. B. Cook for that amount, dated April 19th, 1825." On demurrer it was held that this was not a bill of exchange. The words "pay and take up," etc., were held to be equivalent to pay on taking up. Applying the same construction to the present case, "pay and deduct" would be equivalent to "pay on deducting," or "pay by deducting." Either construction must take away negotiability.

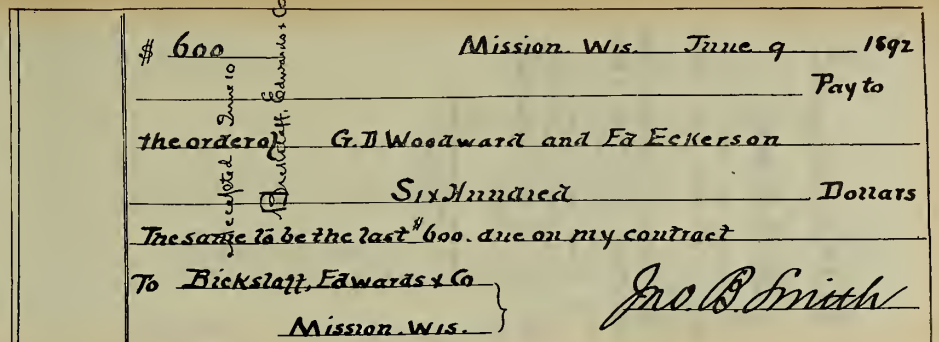
It has already been shown that this was an order payable on a contingency. The acceptance partakes of the same qualified character. Thus, it is said in 1 Parsons on Notes and Bills, 304: "An absolute acceptance of an order payable on a contingency is the same, in legal effect, as if the instrument had all the requisite certainties of a bill of exchange with a conditional acceptance."

16 N. Y. 251.

NO. 6.

DRAFT ON SPECIAL FUND,--NEITHER ACCEPTORS OR INDORSERS LIABLE.

McMASTER'S COMMERCIAL DIGEST PAGE 464A; 80 N. W. REP 440.



$ 600 Mission. Wis. June 9 1892

Pay to

the order of G. H Woodward and Fa Eckerson

Six Hundred Dollars

The same to be the last $600. due on my contract

To Bickslatt, Edwards & Co

Mission. Wis.

Jno B. Smith

Accepted June 10

Bickslatt, Edwards & Co

S. D. Woodward,
W. E. Emerson

This draft is drawn on a special fund and is not negotiable.

The payees, by simply writing their names on the back hereof, would incur no liability.

The acceptors did not on final settlement owe Smith anything, so their acceptance was of no value.

McMASTER'S COMMERCIAL DIGEST, PAGE 494 A; 90 N. W. REP 440

NO. 7.

DRAFT ON SPECIAL FUND

This check was held to be non-negotiable.

172A, VOL. 1, McMASTER'S REVERSED CASES; 48 AT. REP. 428.

No. 5 New Haven. Aug 16 1900

National Savings Bank

Pay to the order of Julius C. Carle

Three Hundred Dollars.

Or what may be due on my deposit book No 631

$300 = Mo. F. Edwards

Indiana C. Cable

The payee of this draft presented it to the National Savings Bank and the Treasurer accepted it.

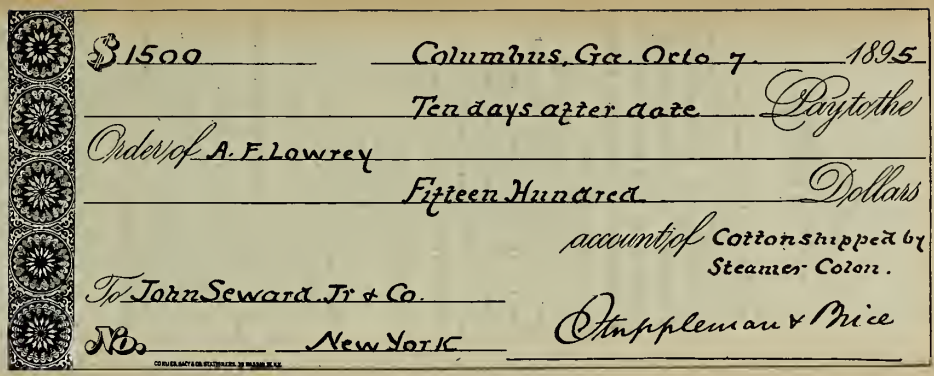
In the litigation over its payment the court said in part:

"If the order had been negotiable, it might have been held to import a consideration, but it is not negotiable. It is payable out of a particular fund. It is to pay $300, or what may be due on a specified book. The amount to be paid is made to depend upon the adequacy of a specified fund. Such an order is conditional, and so not negotiable."

No. 8.

DRAFT ON SPECIAL FUND:
NON-NEGOTIABLE INSTRUMENT.

McMASTER'S COMMERCIAL DIGEST,
PAGE 42A,
32 N. Y. 239.


$1500
Columbus, Ga. Oct 7 1895
Ten days after date Pay to the
Order of A. F. Lowrey
Fifteen Hundred Dollars
account of Cotton shipped by
Steamer Colon.
To John Seward Jr & Co.
No New York
Stuppleman & Price

P. T. Dorsey.

This draft is drawn on a special fund and is therefore non-negotiable. This decision is adhered to in practically every State. In many States an indorser of the draft would not be held as such.

A draft to be negotiable must be drawn on the general credit of the drawer; its payment or acceptance must not be contingent on the condition of a certain fund.

McMASTER'S COMMERCIAL DIGEST.
PAGE 42A.
32 N. Y. 239.

The following orders to pay have rendered the bill non-negotiable:

"Out of money due as per contract." 29 W. Va. 462.

"Out of money to be collected on certain note." 33 Tex. 282.

"Out of claims against certain estate." 46 N. Y. 660.

"And charge same to my account of grading and paving." 75 N. Y.

"And charge same to my account for labor and material furnished." 81 N. Y. 454.

Sec. **Determinable Future Time; What Constitutes.** An instrument is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable:

1. At a fixed period after date or sight; or

2. On or before a fixed or determinable future time specified therein; or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

See **Wisconsin**, Laws 1906, ch. 78, sec. 1678.

No. 9.

April 3, 1902.

FUTURE TIME:

EVENT THAT DETERMINES.

On the death of Eliza M. Smith, I promise to pay to her estate the sum of five hundred dollars.

Addison Smith

McMASTER'S COMMERCIAL CASES.
1914, PAGE 7A.
156 APP. DIV. (N. Y.) 807.

Passing upon this instrument the court said: "Instruments in the above form are not negotiable. They are payable neither to order or bearer (N. I. L., sec. 1, ch. 4), nor are they payable at a 'determinable future time.'" This latter sentence was dicta, but, it possibly had in mind that the "event" was not her death, rather the "estate" created after her demise.

McMASTER'S COMMERCIAL CASES, 1914, PAGE 7A.

NO. 10.

$900.00

No. 0187.

Cambridge, Idaho, May 8, 1903.

NON-NEGOTIABLE NOTE.

Six months after date, for value received, I, we, or either of us jointly and severally promise to pay to the order of Unita Hereford Cattle Company the sum of nine hundred dollars, with interest at the rate of ten per centum per annum from date until paid.

Payable at the office of the Peoples' Bank, Salubria, Idaho.

Should this note be collected by suit, ten per cent. shall be allowed holder as attorney fee. The sureties, guarantors and indorsers of this note severally waive presentation for payment, protest and notice of protest. No extension of time of payment with or without our knowledge by the receipt of interest or otherwise shall release us or either of us from the obligation of payment.

J. H. Bolan

Bank holds note subject to all the equities, counterclaims and defenses that existed between Boland, the maker, and the Cattle Co., the payee.

McMASTER'S COMMERCIAL CASES.
1908, PAGE 221A.
93 PAC. 508.

Vinita Hereford
Cattle Co by
Patrick Welsh, Treas
Union Stockyards
National Bank of
South Omaha, Neb.
by Joseph Gilligan
Cashier

The Union Stockyards National Bank of South Omaha, Neb., is the holder of this promissory note and sued the maker, J. H. Bolan. The bank claimed to be an innocent holder for value and a purchaser before maturity. The defendant, Bolan, endeavored to show that the consideration which passed from the payee to him for the note had failed; also that the company, which was the payee, was a foreign corporation and not entitled to do business in the State or to bring actions in the State. These defenses the trial court would not allow the maker to set up, holding that the indorser was a bona fide holder for value and that the equitable defense could not be set up against such a holder. The judgment for plaintiff was reversed, however, on the ground that this was not a negotiable note. The fact that the note provided that "no extension of time of payment with or without our knowledge by the receipt of interest or otherwise, shall release us or either of us from the obligation of payment," which provision referred to the indorsers, made the note non-negotiable because the note was not payable at a determinable or fixed future time. The Negotiable Instruments Law provides that an instrument to be negotiable must be payable on demand or at a determinable future time, and it also provides: "An instrument is payable at a determinable future time within the meaning of this act which is expressed to be payable: first, at a fixed rate period after date or sight; or, second, on or before a fixed or determinable future time specified therein; or, third, on or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain. An instrument payable upon a contingency is not negotiable and the happening of the event does not cure the defect."

Sec. 5. **Additional Provisions not Affecting Negotiability.** An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

2. Authorizes a confession of judgment if the instrument be not paid at maturity; or

3. Waives the benefit of any law intended for the advantage or protection of the obligor; or

4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

Sec. 6. **Omissions; Seal; Particular Money.** The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated; or

2. Does not specify the value given, or that any value has been given therefor; or

3. Does not specify the place where it is drawn or the place where it is payable; or

4. Bears a seal; or

5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

Clause 1, if undated, cf. sec. 17. Cl. 3, for place of presentment, cf. sec. 73 and No. 11, infra.

See **Illinois** Rev. Stats., 1909, p. 1532, sec. 6. **Kentucky** Stats. 1909, art. 9, sec. 1903. **North Carolina** Laws 1908, ch. 54, sec. 2156. Pell. **South Dakota** Laws 1913, ch. 273, sec. 6. **Wisconsin** Laws 1906, ch. 78, sec. 1670.

NO. 11.

DATE.

A note without date takes date as of the day of its first delivery.

92 IND. 375.

$300 Memphis, Tenn. 1900.

Three months after date I promise to pay to the order of W. V. Johnson

Three hundred Dollars

at First National Bank

Value received.

No. Due.

L. F. Lawlor

CRANE'S BOND

W. L. Johnson

This note is not dated. Its date will be fixed as of the day of its issue and delivery.

Sec. 7. **When Payable on Demand.** An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or

2. In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.

Sec. 8. **When Payable to Order.** The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer or drawee; or

2. The drawer or maker; or

3. The drawee; or

4. Two or more payees jointly; or

5. One or some of several payees; or

6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

Sec. 9. **When Payable to Bearer.** The instrument is payable to bearer:

1. When it is expressed to be so payable; or

2. When it is payable to a person named therein or bearer; or

3. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it as payable; or

4. When the name of the payee does not purport to be the name of any person; or

5. When the only or last indorsement is an indorsement in blank.

Clause 4, cf. sec. 34; cl. 5, cf. sec. 30; cl. 1, sec. 40.

For text changes, see **Illinois** Rev. Stats., 1909, page 1532, sec. 9.

Sec. 10. **Terms When Sufficient.** The instrument need not follow the language of this Act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. Cf. sec. 40.

For text changes see **Alabama** Civ. Code No. 107, sec. 4968. **Idaho** Civ. Code 1908, Title XIII, sec. 3468. **Illinois** Rev. Stats., 1909, page 1534, sec. 10. **Iowa** Code Supp. 1902, ch. 3a, Title XV, sec. 3070. **West Virginia** Code Supp. 1917, ch. 99, sec. 3456-a-10. **Wisconsin** Supp. Laws 1906, ch. 78, sec. 1686. **Wyoming** Comp. Stats. 1910, ch. 210, sec. 3169.

Sec. 11. **Date, Presumption as to.** Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement, as the case may be.

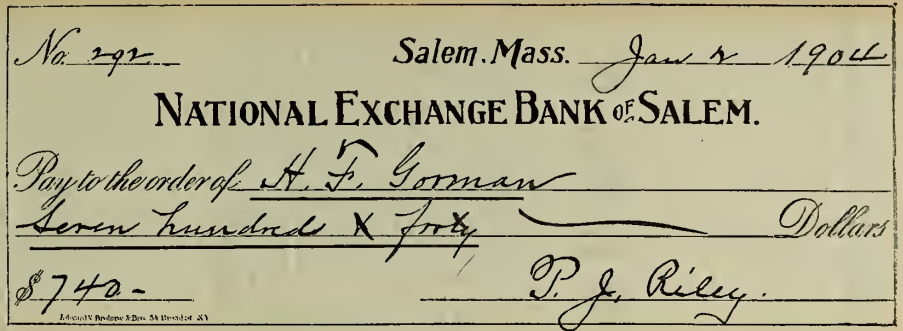
Sec. 12. **Ante-dated and Post-dated.** The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

NO. 12.

POST-DATED CHECK:

PAST DUE PAPER: INDORSER.

McMASTER'S COMMERCIAL CASES.
1906, PAGE 146A.
74 N. E. 926.


No. 291 Salem, Mass. Jan 2 1904

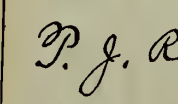
NATIONAL EXCHANGE BANK OF SALEM.

Pay to the order of H. F. Gorman

Seven hundred & forty Dollars

$740-

P. J. Riley.



Riley, the maker of this check, drew it for the accommodation of one Sibley. The check was dated ahead when issued, and was made payable to K. F. Gorman, a clerk in the office of Sibley. It was indorsed by Gorman and P. J. Riley & Co., a business title used by Riley, and was then by Sibley left with a bank, of which one Symonds was cashier. This cashier allowed Sibley to draw the money on the check. The check was not paid at maturity, and the directors of the bank compelled the cashier to take it up, individually. This the cashier did some twenty days after the check was past due and dishonored. At that time Riley claimed to have a good counterclaim against Sibley, and he, Riley, being sued by Symonds, claimed that Symonds took the check after it was past due and dishonored and with notice of this counterclaim. The court held that if Symonds conceded all of this, he could yet recover, as he, Symonds, in taking the check from the bank, took the bank's title, and it was not disputed that the bank was a *bona fide* holder, having taken the check for value and before maturity.

Sec. 13. **When Date May be Inserted.** Where an instrument expressed to be payable at a fixed period after date, is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him the date so inserted is to be regarded as the true date.

Sec. 14. **Blanks; When May Be Filled.** Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. Cf. sec. 13.

Variants: **Illinois** Rev. Stats. 1909, sec. 14. **Kentucky** Stats. 1909, art. 9, sec. 1911. **South Dakota** Ch. 279, sec. 14. **Wisconsin** Laws 1906, ch. 78, sec. 1689

No. 13.

FILLING IN OF BLANKS.

McMASTER'S COMMERCIAL CASES,
1910, PAGE 74A,
119 N. Y. SUPP. 290.

$1000.00/100

New York, _____ 190_

_____ after date promise to pay

to the order of _____

One Thousand & 00/100 _____ Dollars
100

at 108 Grand Street, New York.

Value received

No. _____ Due _____

M. Herzenstein

D Herzenstein

The note was delivered in December, 1904, to the plaintiff in the form shown here. In January, 1908, plaintiff filled in "December 27, 1904" as the date, "January 15, 1908" as the time of payment, and "Usefof" as payee. The Court held that such filling in was authorized, and that plaintiff could recover according to the terms of the note as filled in by her. She could not have filled in provision for interest, there being no such blank.

119 N. Y. SUPP. 290.
SEE 1909, PAGE 272A.
99 PAC. 391.

Sec. 15. **Incomplete Instrument not Delivered.** Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery. Cf. sec. 30 and sec. 16.

Sec. 16. **Delivery; When Effectual; When Presumed.** Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

For text changes, see **Kansas** Laws 1909, ch. 84, sec. 16. **North Carolina** Laws 1908, ch. 54, Pell. **South Dakota** Laws 1913, ch. 279, sec. 16.

No. 14.

CONDITIONAL DELIVERY.

The conditional delivery gave rise to a mere "equity," which was cut off by transfer of the paper to a party taking without notice.

McMASTER'S COMMERCIAL CASES,
1910, PAGE 10A,
170 FED. 313.

$105.00 April 13, 1903

On July 1, 1903 after date we promise to pay to the order of Robert Burgess & Son One hundred and five Dollars if there be any default in payment of interest the whole sum to become payable immediately. Value received with Interest at 6% payable annually

Hodgdon Bros.

No. Due

Robert Burgess & Son.

In the case of Gillette v. Hodge, the court held that the provision as to interest in this note was not self-executory. Therefore on the nonpayment of such interest, the whole note did not *ipso facto* become due, but that it was at the option of the holder to treat it as due or not due as he saw fit.

At the trial evidence was introduced to prove the agreement relating to the conditional delivery of the notes. Defendants failing to prove that plaintiffs had any notice of this agreement at the time they became indorsers of the paper, the evidence was excluded. The agreement would be a valid defense as between the original parties, but is not available against an indorser in good faith.

170 FED. 313.

Sec. 17. **Construction Where Instrument is Ambiguous.** Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

6. Where a signature is so placed upon an instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Wisconsin Laws 1906, ch. 78, sec. 1692.

Sec. 18. **Liability of Person Signing in Trade or Assumed Name.** No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

No. 15.

ASSUMED NAMES.

McMASTER'S COMMERCIAL CASES.
1911. PAGE 50A.
77 ATL. REP. 869.

$ 250.00/100 Rutland, Vt., June 15th 1908

At sight Pay to

the order of Berwick Hotel

two hundred and fifty and no/100 Dollars

Value received and charge the same to account of

To Clark Bros. Coal Mining Co.,

No Philadelphia, Pa. J. F. Scott.

ALL LETTERS

There was no such company as the Berwick Hotel to which the draft is payable. "Berwick Hotel" was simply the name under which plaintiff did business. Nevertheless the plaintiff being the real party in interest was allowed to recover. Though the defendants had never accepted the draft they were held estopped to deny liability thereon by reason of their conduct in accepting drafts of like nature.

(See Decision No. 1322.)

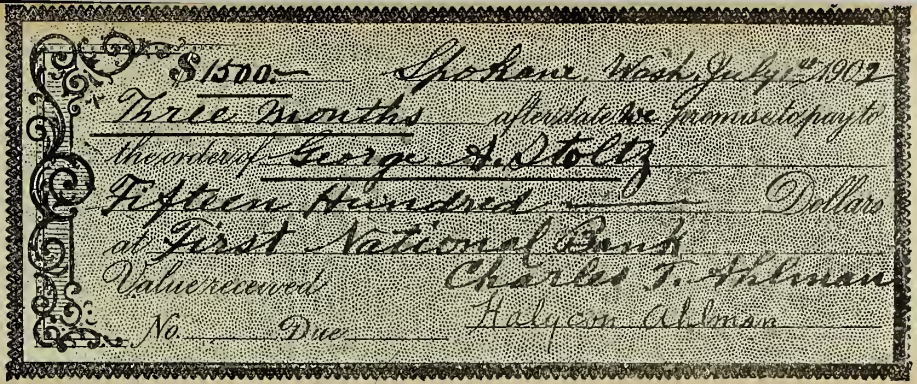
77 ATL. REP. 869.

NO. 16

ORAL GUARANTY OF NOTE.

Guarantor may be liable, although his signature is not on the instrument.

McMASTER'S COMMERCIAL CASES,
1905, PAGE 366A.
76 PAC. 999.


$1500.— Spokane, Wash. July 1st 1902

Three Months after date we promise to pay to the order of George A. Stolz

Fifteen Hundred ——— Dollars

at First National Bank

Value received. Charles T. Hillman

No. ——— Due ——— Hedges & Inman

Without indorsing this note, the payee, George A. Stoltz, sold it to Simon Swenson and another. It was alleged, and the court found, that Stoltz orally guaranteed to Swenson that the note was perfectly good—as good as gold—and would be paid by said makers when it may become due. The Negotiable Instruments Law is in force in Washington where Swenson sued Stoltz for the amount and recovered judgment. The above law says: "No person is liable on the instrument whose signature does not appear thereon . . ." The court said in part: "This is not a suit on the instrument but upon the guaranty . . . that the amount the note represented would be paid when due. The guaranty of a note is not a promise to answer for the debt of the maker, and is not within the statute of frauds when it is negotiated in consideration of value received by the guarantor, but it becomes the original and absolute obligation of the guarantor himself, whereby he promises to pay his own debt to the guarantee: that is to say, the debt he owes his guarantee for what he has received from the latter. The note meanwhile is delivered and held as collateral to the promise of the guarantor. If the maker pays it at the date of its maturity, the guarantor's obligation is by that fact discharged; but if the maker fails to pay, the guarantor remains liable upon his own obligation, which is absolute and independent of the note itself. 21 N. Y. 336, 80 N. Y. 269, 50 N. E. 702, 42 Or. 474. "That an oral guaranty under such conditions is binding upon the guarantor is held in 67 N. Y. 237, 45 Ohio St. 236, 18 N. W. 570, 25 Pa. 89." As to the clause in the Negotiable Instruments Law which says no liability can exist without the person's signature is on the paper, the court said in part: "Such is no doubt true where liability is predicated on the instrument itself, but as we have seen, this is not such a case. The liability sought to be enforced neither arises out of the instrument, nor is it based thereon. This note, made by third parties, is merely an incidental and collateral matter to the agreement (guaranty) sued upon here, which is in effect an agreement to make good (to Swenson the money he turned over to Stolz)." All of the decisions above cited to bear out this decision were made prior to the enactment of the Negotiable Instruments Law except 42 Or. 474. See 69 Pac. 1027, 30 Pac. 506.

McMaster's Com. Cases, Vol. 1905, 78 Pac. 999.

Sec. 19. **Signature by Agent; Authority; How Shown.** The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

See **Kentucky** Laws 1909, art. 9, sec. 1915. **South Dakota** Laws 1913, ch. 279, sec. 19.

NO. 17.

DIRECTORS: CORPORATE NOTE: CORPORATION.

Where paper can only be issued by a resolution of a board of directors, the directors must meet as a board when giving the authority. Individual action of each member will not answer. This rule applies to any act required to be done by a board of directors.

McMASTER'S COMMERCIAL DIGEST, PAGE 485A; 34 SO. E. REP. 180.

$1500-

Savannah. Ga. Oct 9 1898

Six months after date We promise to pay to the order of O.A. Simpson

Fifteen Hundred Dollars

at Second Nat Bank

Value received

Southern Oil Co.

By P.T. Lamson

Pres't.

No. Due

CRANE'S BOND — John Polhemus Printing Company 131 Fulton St. N.Y.

O.B. Simpson

It was conceded that no officer of the Southern Oil Co. had general authority to issue its notes.

This note was issued by direction of each member of the Board of Directors signing his assent and direction on a paper, but this would not validate the note. Acts required to be done by a Board of Directors, must be done with the board in session. Assent or direction obtained from each member outside of a board meeting will not answer.

McMASTER'S COMMERCIAL DIGEST, PAGE 465 A: 14 SO. E. REP. 180; 25 MINN. 43 45 PA ST, 386; 24 N. J. EQ. 143; 15 IND. 327; 42 MICH. 536; 29 N. H. 565; 47 IOWA, 11.

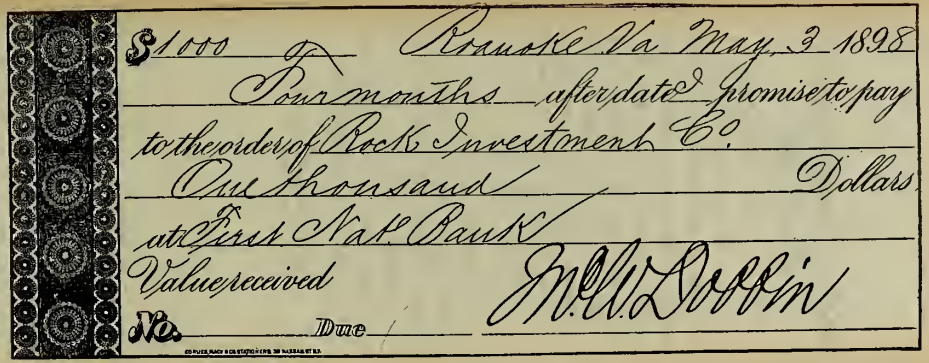
"In 17 Am. & Eng. Enc. Law, p. 83, it is declared: 'The legal effect of investing the management of the affairs of a corporation in the board of directors is to invest the directors with such government and management as a board, and not otherwise. The separate action individually of the directors is not the action of the constituted body of men clothed with corporate powers.' In the case of Baldwin v. Canfield, 26 Minn. 43, 1 N. W. 261, it appeared that the government and management of the affairs of a private corporation was vested in the board of directors. It was there decided that the legal effect was to invest the directors with such government and management as a board, and not otherwise; that the governing body of corporations are agents of the corporation only as a board, and not individually; and that they have no authority to act for the corporation save when assembled at the board meeting; and that the separate action, individually, of the persons composing such governing body, is not the action of the constituted body clothed with corporate powers. It appeared in that case that a deed to real estate belonging to the association was executed in its name by all the directors acting separately, and not as a board, and without any authority from the board of directors. It was held that the conveyance was void, and equally ineffectual as a contract to convey. See, also, 14 La. Ann. 811; 45 Pa. St. 386; 2 Sandf. Ch. 186; 24 N. J. Eq. 143."

NO. 18.

CORPORATION

...wer of Treasurer who kept the bank account
...signed the checks thereon to indorse and sel
...es owned by the corporation.

McMASTER'S COMMERCIAL DIGEST.
PAGE 293 A.



Rock Investment Co
E. D. Cole
Treas.

Cole, who was the treasurer of the above company, signed all of its checks drawn on its bank account. This fact did not warrant the supposition that he had the authority to indorse and sell notes payable to the company, and the person who bought the note in good faith got no title to it.

The authority to sign and indorse notes must be specially given by the by-laws or the directors.

No officer, by virtue of his title, has such authority.

McMASTER'S COMMERCIAL DIGEST.
PAGE 293 A.

No. 19.

CORPORATION: ACCOMMODATION INDORSER.

...is held here that a president of a corporation, ... had authority to make and indorse paper, ...ld not bind the corporation by an accommo... ...on indorsement, even if a bonus was received ...efor.

...e directors would probably be powerless to ...idate such indorsements.

McMASTER'S COMMERCIAL DIGEST, PAGE 448 A; 116 N. Y. 281

$10000 [illegible] New York Aug. 27 1898

Four months after date We promise to pay to the order of Ourselves

Ten Thousand Dollars

at Produce Exchange Trust Co

Value received

No. Due

Squeers. Tyler + Co

Squeers. Tyler & Co.

American German
Warehouse Co.
By R D Squeers
Prest.

The bank that took this note discounted it for the makers, thus knowing that the second indorser was an accommodation indorser. The makers paid the second indorser $360 for indorsing. The court held that the second indorser, which was a corporation organized under the manufacturing corporation act of New York, could not bind itself by indorsing for the benefit of other parties--although for its own business the president had authority to make and endorse paper.

"The indorsements having been made for the accommodation of the makers, and the plaintiff having discounted the notes with notice of that fact, cannot recover."

McMASTER'S COMMERCIAL DIGEST.
PAGE 448A.
116 N. Y. 281.

Sec. 20. **Liability of Person Signing as Agent.** Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

No. 20.

CORPORATION NOTE.

To fix liability the corporation must promise and its name and seal as signature.

McMASTER'S COMMERCIAL CASES.
1906, PAGE 40A,
80 PAC. 811.

German-American Investment Company, Inc.

No. 409

$600. Seattle, Wash., Feb'y 8th 1902.

Received from Norman Daniel

Six Hundred Dollars

which we promise to pay Six Months after date with interest at the rate of 8% per annum.

G. A. I. Co. SEAL SEATTLE, WASH

Wm. H. Buttner Pres.

N. McGlidden Sec'y

This note was held to be the individual obligation of W. H. Buttner and of H. M. Glidden. They represented to the payee, Herman Daniel, that the "German American Investment Co., Inc.," was a responsible, flourishing, monied institution, when in fact it was to their knowledge insolvent. The note would doubtless have been held to be the obligation of the corporation if in the body of the paper the promise to pay had been made to read "The German American Investment Company promises," etc., instead of "We" promise, etc., or if over the signatures of the officers had been written the title of the corporation, and where a seal is intended to be a part of an instrument reference should be made to it in the paper. The court said in part:

"What purports to be the seal of the German American Investment Company is impressed upon the paper, but by no reference is it made a part of the note itself. There are no apt words used in the note showing that the corporation is obligated. Therefore, although appellant's signature is followed by an abbreviated word indicating a representative capacity, yet, no obligated principal being disclosed, he cannot escape personal liability under our Negotiable Instruments Law. Section 20 of that statute, c. 149, p. 345, Laws 1899, is as follows: 'Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.' The signatures to this instrument come squarely within the terms of the above section, and the signers are personally liable."

McMaster's

No. 21.

CORPORATE SIGNATURE

By affixing improper signature to acceptance th
ent became liable for debt of principal

McMASTER'S COMMERCIAL DIGEST,
PAGE 228 A

No 40

Office of Portage Lake Manufacturing Co.

Hancock, Mich. June 5. 1891.

E.T. Loring. Agent.

39 State St. Boston, At four months — Sight

Pay to the order of — I. H. Slawson — Accepted June 15. 1891 E. T. Loring Agent. — — —

— Four Hundred — — — Dollars.

and charge same to the account of this Company

W. P. Jackson

Agent

$400 00

J. K. Seaver

The courts invariably give no more force to the affix, "agent," "president," "treasurer," &c., to the signers of commercial paper than they would if such signer added the affix "Democrat," "Presbyterian," &c. By adding such prefix the courts would not inquire as to whether the national committee of the Democratic party, or the Presbyterian General Assembly were to pay the paper. Usually all official designations are treated by the courts as mere description of the person.

It was said by the court in this case:

"It is wholly immaterial, therefore, that the defendant was in fact the agent of the company named on the face of the drafts; that the plaintiff knew that he was so, and that the defendant (Loring) had no interest in the company. (5 Gray, 567; 5 Allen, 338.)

"Taking the signature of the defendant as acceptor, written across the face of the draft, by itself, without reference to other parts of the instruments, it is clear that it would bind him personally. It discloses no principal, nor s it in a form which would exclude the personal liability of the acceptor. It is equivalent to this promise: 'Having funds of the drawer in my hands, I hereby agree to pay the amount of the drafts at maturity.' The addition of the word agent to his name is not sufficient to exempt a party from liability on such a contract. It is a mere *descriptio personæ*, designed to indicate the fund to which the money is to be charged, or the use to which it is to be appropriated." (6 Mass. 58; 5 Mass. 299; 5 Selden 571; 1 Allen, 130.)

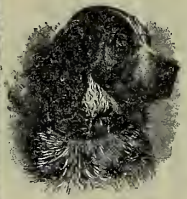
NO. 22.

CORPORATE SIGNATURE.

Certain signature intended to be official, held to individual.

McMASTER'S COMMERCIAL DIGEST.
PAGE 60A.
162 ILL. 241.

$7500 Joliet, Ill., July 7 1897



Six months after date We promise to pay to the order of John Baldwin, President.

Seventy Five Hundred Dollars

at Second Nat'l. Bank

Value received Roy Stone Co.

By John Baldwin

President

No. Due

CRANE & BOND John Fisher & Co., Printing Company, 121 Fulton St. N.Y.

John Baldwin
President

While John Baldwin could not be held individually as maker of this note,--it was held that the indorsement, as above, could bind individually. The proper form of signature for its corporation is that signed on the face of the note.

McMASTER'S COMMERCIAL DIGEST.
PAGE 60A;
162 ILL. 241.

" The solution of the question depends upon the meaning which is to be given to the word "President" written after the name of (John Baldwin) in the body of the note and in the indorsements thereon.

The word ''President,'' in law, is descriptive, and merely identifies the signer, and does not limit responsibility.

The rule does not apply to a ''Cashier'' of a bank. Cf. Neg. Ins. Law, Sec. 42.

No. 23.

CORPORATE SIGNATURE.

This note was given for the purposes of the Haverhill Oil Co., but the treasurer was held individually on it.

McMASTER'S COMMERCIAL DIGEST, PAGE 62 A.

$300 Haverhill. Mass. May 3 1898

On demand after date We promise to pay to the order of John McClave

Three Hundred Dollars

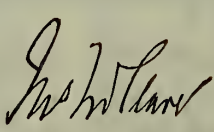
at with interest

Value received D. P. Lovemore

Treasurer Haverhill Oil Co.

No. Due.

CRANE'S BOND John Polkemus Printing Company 121 Fulton St. N.Y.



The owner of this note sued the Oil Co. on it, but stopped the action before judgment and sued Loremore individually and recovered against him.

McMASTER'S COMMERCIAL DIGEST, PAGE 62 A; 78 MAINE, 390.

"We think the note must be construed to be the note of the defendant, and not of the corporation. It contains no apt words showing that the parties understood it to be the contract of the corporation and not of the defendant. It nowhere appears that the defendant made the promise for the corporation. The language used expresses his own promise, and what is added after the signature is descriptive of the person. The following cases are directly in point: Sturdivant v. Hull, 59 Maine, 172; Mellen v Moore, 68 Maine, 390; Davis v. England, 141 Mass. 590.

78 MAINE, 390

A proper form of signature to bind the corporation and not the individual would be:

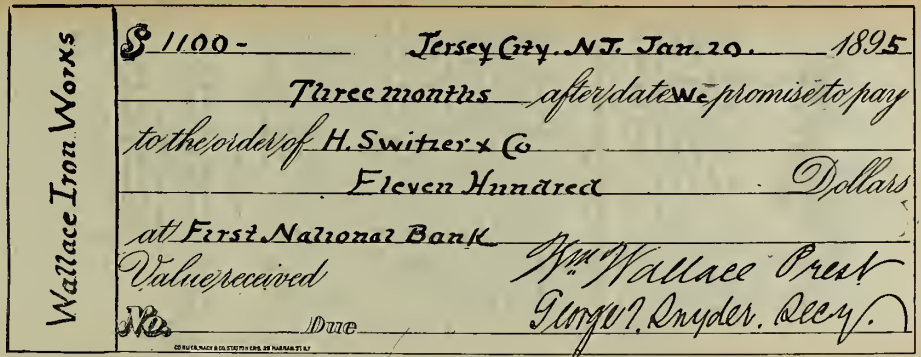
Haverhill Oil Co.,
By D. P. Loremore,
Treasurer.

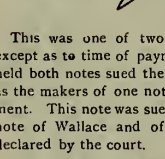
No. 24.

CORPORATE NOTE: FORM OF SIGNATURE.

This note was held to be the individual note of Wallace and Smith, although the owner had declared on a note by the same parties—with the same signatures—as the note of the Wallace Iron Works.

McMASTER'S COMMERCIAL DIGEST PAGE 58 A.


Wallace Iron Works
$1100-
Jersey City. N.J. Jan. 20. 1895
Three months after date We promise to pay
to the order of H. Switzer & Co
Eleven Hundred Dollars
at First National Bank
Value received
No. Due
Wm Wallace Prest
Geo. T. Snyder. Secy.



This was one of two notes exactly alike except as to time of payment. The bank that held both notes sued the Wallace Iron Works as the makers of one note and obtained judgment. This note was sued on as the individual note of Wallace and of Smith, and was so declared by the court.

McMASTER'S COMMERCIAL DIGEST, PAGE 58 A.
150 N. Y. 455.

"Where a negotiable promissory note has been given for the payment of a debt contracted by a corporation, and the language of the promise does not disclose the corporate obligation, and the signatures to the paper are in the names of individuals, a holder, taking bona fide and without notice of the circumstances of its making, is entitled to hold the note as the personal undertaking of its signers, notwithstanding they affix to their names the title of an office. *Such an affix will be regarded as descriptive of the persons and not of the character of the liability.* Unless the promise purports to be by the corporation, it is that of the persons who subscribe to it and the fact of adding to their names an abbreviation of some official title has no legal signification as qualifying their obligation, and imposes no obligation upon the corporation whose officers they may be. This must be regarded as the long and well-settled rule."

136 N. Y. 397

A proper form of signature to bind the corporation only, if both officers wished to sign, would be:

WALLACE IRON WORKS,
By WM. WALLACE, Pres't.
By GEORGE F. SNYDER, Sec'y

No. 25

CORPORATE NOTE: FORM OF SIGNATURE.

This note was held to be the individual note of the signers.

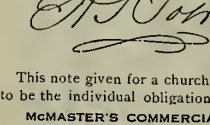
McMASTER'S COMMERCIAL DIGEST, PAGE 60 A.

$600 ——— Chicago. May. 24. 1896. ———

One year after date we the Trustees of the Seventh Presbyterian Church, promise to pay the order of H. F. Powers. — Six Hundred ——— Dollars

value received, with interest

A. F. Bugge L. B. Kelly
John Cabett F. D. Marshall
Trustees.



This note given for a church organ was held to be the individual obligation of the signers.

McMASTER'S COMMERCIAL DIGEST.

PAGE 60-A.

79 ILL. 493.

"The general rule appears to be, where the names of the principal and agent both appear upon the instrument, it will be held to be the bill or note of him who signs it, unless it satisfactorily appears that he signed it in a mere ministerial character, intending to bind another. "Unless," as said Lord Ellenborough, "he says plainly, 'I am the mere scribe,' he will be bound."

The rule is thus stated in 16 Pickering, 350: "As the forms of words in which contracts may be made and executed are almost infinitely various, the test question is, whether the person signing professes and intends to bind himself, and adds the name of another to indicate the capacity or the trust in which he acts, or the person for whose account the promise is to be made; or whether the words referring to the principal are intended to indicate that he does a ministerial act in giving authenticity to the act, promise and contract of another. Does the person signing apply the executive hand as the instrument of another or the promising and engaging mind of a contracting party?"

Testing these notes by this rule, it would seem clear they are binding only on the defendants as individuals. Although the words, "the trustees of the Seventh Presbyterian Church," appear in the body of the notes, and the word "trustees" is appended to the defendants' signatures, there are no words used implying an undertaking on the part of the corporation. The corporation is not assumed to be acting by or through the defendants, nor does it even appear the defendants act for or on behalf of the corporation. The language clearly indicates that the defendants were trustees when they signed the notes, but not that the corporation promised to pay them."

79 ILL. 493.

No. 26.

EXECUTORS: ADMINISTRATORS: TRUSTEES: LACK OF POWER TO BIND THEIR TRUST ESTATES BY COMMERCIAL PAPER OR ANY NEW CONTRACTS.

McMASTER'S COMMERCIAL DIGEST, PAGES 63 A; 162 A; 87 IND. 269; 101 N. Y. 554; 30 SO. E. REP. 331; 42 MINN. 427; 132 MASS. 285; 65 ALA. 607 e

$ 5000 00/100. Durham. N.C. Nov. 3 1897

Four months after date We promise to pay

to the order of Morehouse Bank

Five Thousand Dollars

at Morehouse Bank

Value received Lucy Morehouse, Executrix of Eugene Morehouse

No. Due D.M. Dake Lucius Green

This note was given in renewal of one made by Eugene Morehouse just before his death. The estate was not bound by it; but Lucy Morehouse was held individually.

An executor or administrator cannot bind the estate by signing or endorsing a note, even if given in payment of the debts of the estate; but such signature binds the executor or administrator individually.

McMASTER'S COMMERCIAL DIGEST, PAGES 153 A, 63 A, 140 A:

30 SO. E. REP. 331.

"In the case, 132 Mass. 285, the court said that, while the estate was bound for the charges of the funeral incurred by request of the executor, if a promissory note were given by the executor the estate would not be liable upon it."

"Executors and administrators, even when contracting for matters necessary to the execution of their trusts, do not bind the estate they represent, but are individually liable on such contracts. Suits against them must be personal, and the judgment is *de bonis propriis*, and not *de bonis testatoris*."

65 ALA. 607.

"The court held that if he borrows money for the purposes of the estate, and devotes it to the payment of debts due, or if he contracts for services which are actually rendered, valuable and important to the estate, or if he executes a deed, in his representative capacity, containing covenants which fail, he is individually liable, and judgment must be against him personally; the estate is not bound."

42 MINN. 427.

A signature in form as follows would not have bound Lucy Morehouse:

"Estate of EUGENE MOREHOUSE,
By LUCY MOREHOUSE, Executrix."

No. 27.

EXECUTOR.

Form of signature that bound neither the estate nor the executor.

McMASTER'S COMMERCIAL DIGEST, PAGE 314 A;

52 N. E. REP. 1067.

$700.00 Boston, Mass. Feb. 16 1900

Four months after date we promise to pay to the order of Wm. Jones

Seven Hundred Dollars

at Second Nat'l Bank

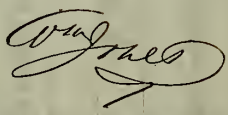
Value received.

Estate of John B. Wheeler

By Hiram F. Wing, Executor

No. Due

CRANE'S BOND



An estate of a deceased person nor its executor or administrator can, without a specific order of the court, make a note or a contract that will bind the estate. Usually where an executor tries to bind the estate he succeeds only in binding himself.

If this note had been signed "Hiram F. Wing, Executor of Estate of John B. Wheeler," then Wing would have been bound individually. Signed in the manner that it is the court said that it neither bound the estate or Wing. The signature was proper in form to bind the estate if power had been given the executor to so bind it. It was the signature of the estate, although valueless when placed on a note; being the signature of the estate it could not be that of Wing, so he was not bound, but see following case:

McMASTER'S COMMERCIAL DIGEST, PAGE 314 A.

No. 28.

GUARDIAN: EXECUTOR.

Note made by guardian under illegal order of court, held to bind the guardian individually, although made in good faith and under proper form of signature.

$1154= Salt Lake City. Aug 19 1900

Six months after date I promise to pay to the order of Frank E McGraw

Eleven Hundred & Fifty Four Dollars

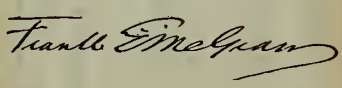
at Office of McCormack & Co

Value received.

John Blassarde
By J H Hand, His
General Guardian

No. Due

FRANKE BOND



Hand was regularly appointed guardian of John Blassarde, and as guardian he was, by an order of court, directed to make this note. He did so in good faith.

The order to make the note was held to be illegal, and Hand was held liable individually for the payment of the note.

The signature was proper in form to bind the ward if the order of the court had been proper.

In the case preceding this it was held that a signature by an executor in the same form bound neither the estate or the executor.

188 A. VOL. 1, McMASTER'S REVERSED CASES.
63 PAC. REP. 668
128 MASS. 161; 61 N. H. 61; 6 IND. APP. 562; 52 N. C. 14; 69 CAL. 636; 55 ALA. 493; 131 ILL. 162.

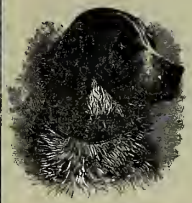
No. 29.

EXECUTOR: ADMINISTRATOR: TRUSTEE: GUARDIAN.

Any of the above entitled officers who take the
le in their individual names to securities repre-
nting estate investments become thereby liable
r their amount, without regard to whether they
ted innocently or not.

McMASTER'S COMMERCIAL DIGEST, PAGE 181 A.

$2100 ≡ Portland, Maine, Nov 9 1898



One year after date I promise to pay to the order of Jacob Gardner

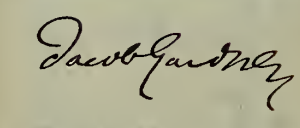
Twenty One Hundred Dollars

at First Nat'l Bank

Value received L. W. Raymond

No. Due

CRANE'S BOND John Fallowfield, Printing Company 121 Fulton St. N.Y.



Jacob Gardner took this note, secured by mortgage, as an investment for two children of whom he was guardian.

The note and mortgage was drawn to him individually in good faith, and probably in ignorance of the law. The security was deficient and he had to make it good.

A trust officer who deposits or invests trust money in his own name becomes personally liable therefor.

His intention in so doing is immaterial.

McMASTER'S COMMERCIAL DIGEST, PAGE 161 A; 120 CALIFORNIA. P33.

"It was distinctly held in Re Arguello's Estate that an administrator who deposits funds of the estate in a bank in his own name, without any designation or indication of his representative capacity, is personally liable for the loss of the deposit resulting from a failure of the bank. The good faith or intention of the administrator in making the deposit in his own name, and the fact that he had no other account in the bank, and that the bank at the time was of good credit, were held to be in no way involved in the question of his liability.

* * * * * *

"It was said in Naltner v. Dolan, 108 Ind. 500, 8 N. E. 289: 'The authorities agree that a trustee who either invests or deposits trust money in his own name, without in some way designating it as trust property, will be responsible for any loss that may occur to the fund which is so invested.'"

Sec. 21. **Signature by Procuration; Effect of.** A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Sec. 22. **Effect of Indorsement by Infant or Corporation.** The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

For text change, see **South Dakota** Laws 1913, ch. 279, sec. 22.

Sec. 23. **Forged Signature; Effect of.** Where a signature is forged or made without authority of person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

For text variations, see **Illinois** Rev. Stats. 1909, page 1536; **South Dakota** Laws 1913, ch. 279.

No. 30.

FORGED INDORSEMENT:

TWO PERSONS SAME NAME.

A middle initial letter, in law, is not recognized as part of a person's name.

McMASTER'S COMMERCIAL DIGEST,
PAGE 290A.
51 N. E. REP. 602.

No. 2754

Buffalo, N.Y. Jan. 4 1900

City National Bank

Pay to the order of George A Bent

One Hundred Thirty Three & 50/100 Dollars

$133 50

R M Russell

George A. Bent.

The maker of this check owed George P. Bent $133.50, but, by mistake, he filled out the check to George A. Bent, and mailed it in an envelope addressed to George A. Bent, and the latter indorsed it and it was cashed for him by a bank. The bank got no title to the check by such indorsement, and lost the money it so paid out.

Judge Magruder of the Supreme Court of Illinois, in his opinion in this case, said in part:

"It is established clearly by the evidence that the George A. Bent who took the draft from the post-office, and indorsed his name on the back of it, was not the real payee to whom the drawer of the draft intended to make it payable. It is true that the real and intended payee and real owner of the draft was named George P. Bent; but the fact that the name of the real owner and the name of the fraudulent possessor of the draft differ, so far as the middle letter of the name is concerned, does not make the case other than a case where the name of the real payee and the name of the assumed payee are the same. This is so because the law does not regard the middle initial letter as a part of a person's name, but only recognizes one Christian name of a party. (Thompson v. Lee, 21 Ill. 241; Erskine v. Davis, 25 Ill. 251; Miller v. People, 39 Ill. 457; Bletch v. Johnson, 40 Ill. 116; Humphrey v. Phillips, 57 Ill. 132.) Forgery of an indorsement upon a negotiable instrument nullifies the instrument as to all parties against whom the forgery is committed. When forged by a stranger to the paper no title passes; so, in this transaction, the indorsement, "George A. Bent," was inscribed by the wrong person (a stranger) forging the signature of the right person.

McMASTER'S COMMERCIAL DIGEST, PAGE 290A,

174 ILL. 571; 51 N. E. REP. 602.

No. 31.

INDORSEMENT: WARRANTY FORGERY.

Instance where indorsement was not warranty previous indorsement.

18, VOL. 1, McMASTER'S REVERSED CASES

No. 27210

Philadelphia, Nov. 1, 1897

Legal Title and Trust Co.

Pay to the order of Herman S. Bisseyel

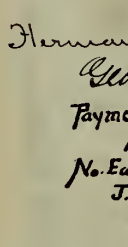
Forty Nine Hundred & Twenty 100 Dollars

Proceeds of Mtg on No 8352 Broad St

$4920#

F. Lord Bigby
Settlement Clerk

Wm R Nickerson
President.



This check was issued for proceeds of a forged mortgage made on premises owned by H. S. Bisseyel. One G. B. Rogers, who represented himself as Bisseyel, forged the mortgage to the Title and Trust Co., and they delivered the check to Rogers, believing him to be Bisseyel. Rogers forged Bisseyel's name on the check and deposited it in the No. E. Nat'l Bank, who indorsed it and received the money on it. It was decided by the Penn. Sup. Court that the No. E. Nat. Bank would not have to make good any loss caused by reason of the forged indorsement, although the one who indorses and receives the money on a check is usually held to warrant all former indorsements. The rule was not applied here, on the ground that the check was paid to the person to whom the Title and Trust Co. delivered it, and whom they treated as Bisseyel, and thus impliedly held him out to the world as Bisseyel.

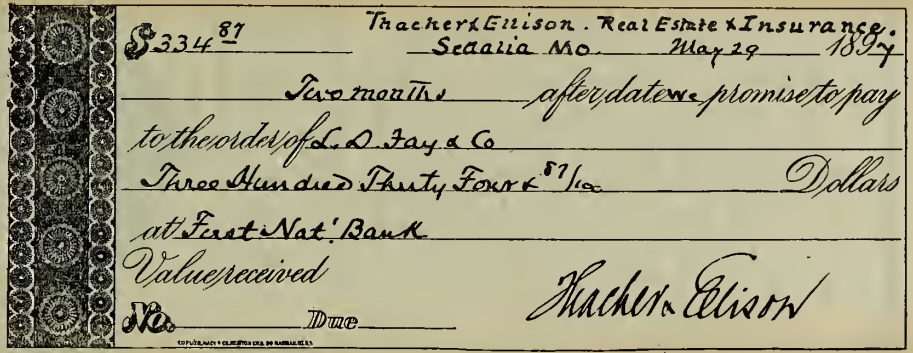
The primary cause of the loss was the forged mortgage, not the forged indorsement. The Title and Trust Co., could not shift the consequences of the fraud successfully practiced on them to the bank.

NO. 32.

PARTNERSH'P

Right of partners in non-trading partnerships to bind the firm by promissory note.

McMASTER'S COMMERCIAL DIGEST, PAGE 252A.



$334.87 Thacker & Ellison. Real Estate & Insurance.
Sedalia Mo. May 29 1897

Two months after date we promise to pay
to the order of L. D. Fay & Co
Three Hundred Thirty Four & 87/100 Dollars
at First Nat' Bank
Value received
No. Due
Thacker & Ellison

L. D. Fay & Co.

Thacher, the senior member of the firm of Thacher & Ellison, made this note, in the firm name, to pay for lumber used to repair a house for which the firm was agent.

It was held that the business of the firm was not one in which one partner has implied authority to make notes in the name of the firm.

This has been held as to a firm of lawyers, and to a firm of insurance agents, and to a firm of publishers. It is only in trading partnerships that such authority is implied.

McMASTER'S COMMERCIAL DIGEST.
PAGE 252A.
78 MO. 128.

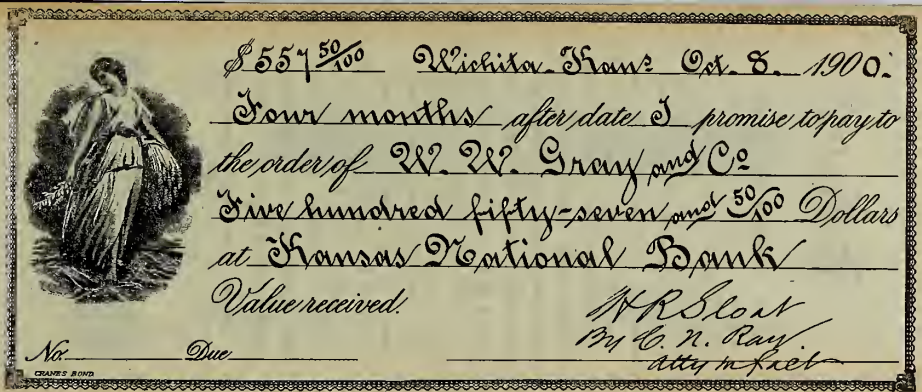
57 ILL. 531, 3 ALA. 175, 50 MISS. 844.
51 IND. 66. 55 CONN. 53. 78 MO. 128.
105 IND. 415.

A trading partnership would include that of merchants, millers, manufacturers and other business which contemplated the buying and selling of commodities.

No. 33.

POWER OF ATTORNEY: SIGNATURE.

Certain power of attorney to carry on business not authorize the execution of notes.



$557 50/100 Wichita Kans Oct 8 1900.

Four months after date I promise to pay to the order of W. W. Gray and Co.

Five hundred fifty-seven and 50/100 Dollars

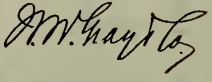
at Kansas National Bank

Value received.

W R Sloat
By C. N. Ray
Atty in Fact

No. Due

CRANE'S BOND



C. N. Ray who was in embarrassed circumstances was carrying on a business in the name of H R. Sloat, from whom he had a power of attorney to conduct the business. The power of attorney was held by a bank where the store bank account was kept. The bank believed that the power of attorney was sufficient to allow Ray to execute notes in the name of Sloat,—and Ray executed this note in good faith and it came into the hands of the bank. It was decided by the courts that Ray could not bind Sloat on a note under the power of attorney, and hence that neither Sloat or Ray was liable on the note.

NO. 34.

CORPORATION: OFFICER: PAYMENT.

Officer paying individual debt by check of corporation signed by himself.

McMASTER'S COMMERCIAL DIGEST, PAGE 360 A

Huntington, N.Y. May 13, 1899. No. 6681.

Bank of Huntington

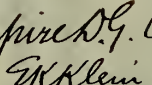
Pay to the order of Empire Dry Goods Company $100.00

One hundred ——————— Dollars.

Arden Mozatt Co.

L. O. Harmon Trs.

Stewart Warren & Co. Lith. 79 Howard St. N.Y.



If the Empire Dry Goods Co. received this check in payment of a debt of D. C. Harmon, or in payment of household goods to be sent to Harmon's house, the Arden Malt Co. could make the Dry Goods Co. refund the money if Harmon had not properly accounted for it, even if the transaction had taken place years before, notwithstanding the fact that Harmon was treasurer of the Arden Malt Co. and had general authority to issue its check. Such authority does not allow an officer to issue such checks to himself or in payment of his own debts, and of this the creditor must take notice.

McMASTER'S COMMERCIAL DIGEST. PAGES 380 A; 157 A; 94 FED. REP. 30.

"The checks themselves gave notice of a suspicious fact * * * They showed upon their face that the treasurer was apparently using the money of the corporation for his own purposes, since they were not his own checks, but the checks of a corporation issued by him as its treasurer." 58 N. E. 114.

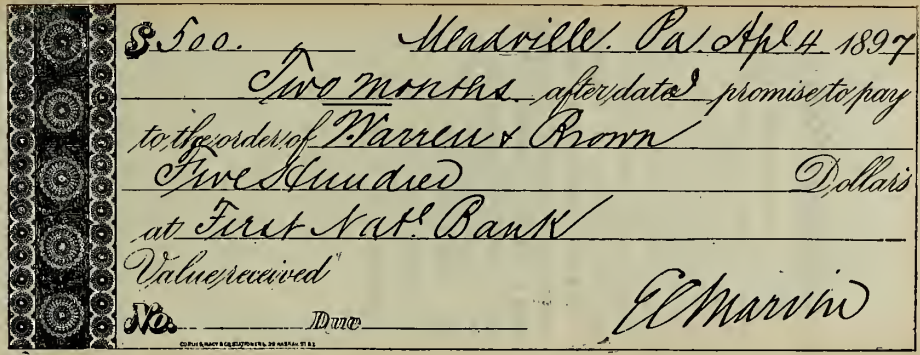
In another case: An agent of the Glass Buildings gave for his own debt a check signed by himself as agent of the Glass Buildings. The check was paid, five years afterwards the owner of the Glass Buildings brought an action to recover the amount, and recovered it. The court said in part: "We think that the form of the signature was sufficient to put the payee on inquiry as to the right of the agent to pay his personal debt out of the funds." 130 N. Y. 261. See No. 25.

No. 35.

PARTNERSHIP.

Paper payable to a firm of Warren & Brown, and indorsed by Warren in the firm name, could not be safely credited to Warren's individual account, although he might safely be paid the money on it.

McMASTER'S COMMERCIAL DIGEST, PAGE 46 A.


$500. Meadville. Pa. Apl 4 1897
Two months after date I promise to pay
to the order of Warren & Brown
Five Hundred Dollars
at First Nat'l Bank
Value received
No. Due
E C Marvin

Warren & Brown

If Warren of the above firm made this endorsement, a bank would not be warranted in giving him credit for it, as the presumption is that the note is firm property, and the bank must not aid in diverting it to one of the members.

If Warren indorsed it and asked for the money the rule would not be the same, as the presumption then is that he will apply the proceeds to partnership purposes.

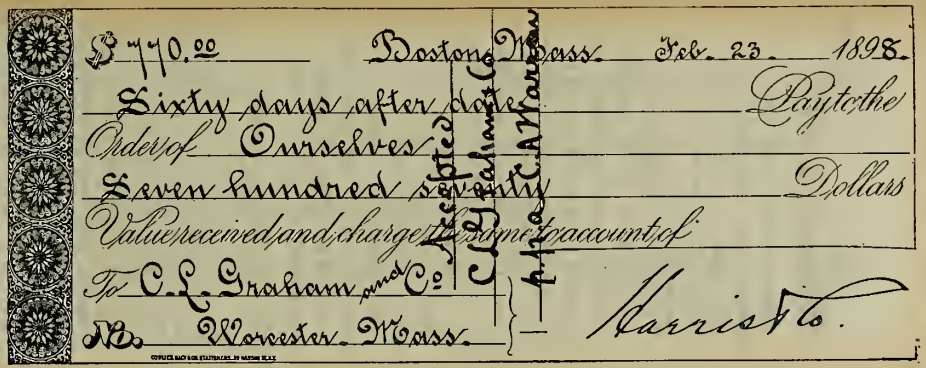
McMASTER'S COMMERCIAL DIGEST.
PAGE 46A.
178 PA. 17. 12 PET. 221. 35 ATL. 865.

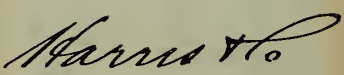
No. 36.

POWER OF ATTORNEY: ACCEPTANCE.

Power of attorney to sign checks did not give power to accept drafts.

McMASTER'S COMMERCIAL DIGEST. PAGE 95A.





Harris & Co., dealers in pianos, sold many of their instruments to Graham & Co., and the bills were paid by checks signed

"C. L. GRAHAM & CO.,
p. p. a. C. A. Warren."

Warren held written power of attorney to so sign checks.

Harris & Co. drew this draft which was accepted in the same signature that was used in signing checks. The draft got into a bank's hands--but they could not enforce it against Graham & Co.

The power of attorney to sign checks at the bank was not broad enough to cover acceptance of time drafts.

McMASTER'S COMMERCIAL DIGEST, PAGE 95A; 48 N. E. REP 341

The following quotation is from the opinion: "The next request with which we have to deal was that there was no evidence to charge the plaintiff with notice of any irregularity or want of authority in the issuing (acceptance) of the drafts. The signature, 'p. p. a.,' probably meant, and certainly might have been found to mean, 'per power attorney.' The letters were notice to the plaintiff on the face of the bill that his agent depended for his authority to sign upon a written document, (power of attorney,) and the plaintiff took its chances if it did not call for the production of the power." 6 C. B. 706; 7 Barn. & C. 278; 11 Grat. 269; Id. 281, 206.

No. 37.

POWER OF ATTORNEY: SIGNATURE: LIABILITY OF PAYEE OF CHECKS WHICH BEARS LECAL INDORSEMENT OF PAYEE.

No. 2929 Chicago. Oct. 2 1900

North Western National Bank

Pay to the order of C. N. Faye

Twenty Two Thousand, One Hundred Thirty Seven 50/100 Dollars.

$22.137 50/100

P. O. Sutter & Co.

Charles E. Anderson held power of attorney from C. N. Faye in form as follows:

"Know all men by these presents, that I do hereby make, constitute, and appoint Charles E. Anderson to be my true and lawful attorney, for me and in my name to draw checks, bills of exchange, and drafts, and make orders and overdrafts upon the Northern Trust Company of Cbicago, and in my name to indorse checks, drafts, bills of exchange, notes, and orders for deposit in said Northern Trust Company, hereby confirming all that my said attorney shall do under above authority." While Faye was absent from the city Anderson abstracted certain shares of stock of the Chicago Edison Co. standing in the name of Faye, and forged Faye's name thereon and sold them to Slater & Co., receiving from them a check, in effect, like this one. Anderson indorsed the check as above and deposited it to Faye's credit and then drew out the money under the power of attorney and absconded.

The Chicago Edison Co. were compelled to issue new certificates to Faye, and Slater & Co. had to surrender the ones issued to them by that company in place of the forged ones.

Slater & Co. then sued Faye for the amount of this check, which had his indorsement under the power of attorney, and which was deposited to his credit in his bank account. Faye won in the appellate court.

"We have in the case of Bank v. Oberne, 121 Ill. 25, 7 N. E. 85, carried the rule so far as to hold that although the agent did not have authority to do the particular act by which the money was obtained, and although the principal did not know of the act or of the fact that the money had been used by his agent for his benefit, yet if the evidence showed that the principal in his business in fact got the benefit of the money, in whole or in part, he would be liable for such part as the evidence showed he did get the benefit of. We think that is carrying the rule as far as it ought to be carried. We are unable to concur in the view that the mere passing of this money through the bank account of plaintiff in error without authority given by him, and in the absence of evidence showing it went to his benefit or was used by or for him, can be held to be such receiving of the money of defendants in error by him as in equity and good conscience renders him liable for money had and received for the use of defendants in error."

1 A, VOL. 2, McMASTER'S REVERSED CASES;

62 N. E. 592.

It here appears that drawing a check to the order of "A," is not a sure way of making him accountable for the money, even if the check bas his legal indorsement.

103 A, VOL. 2, McMASTER'S REVERSED CASES.

ARTICLE II.

CONSIDERATION OF NEGOTIABLE INSTRUMENTS.

Sec. 24. Presumption of Consideration. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Sec. 25. Consideration; What Constitutes. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

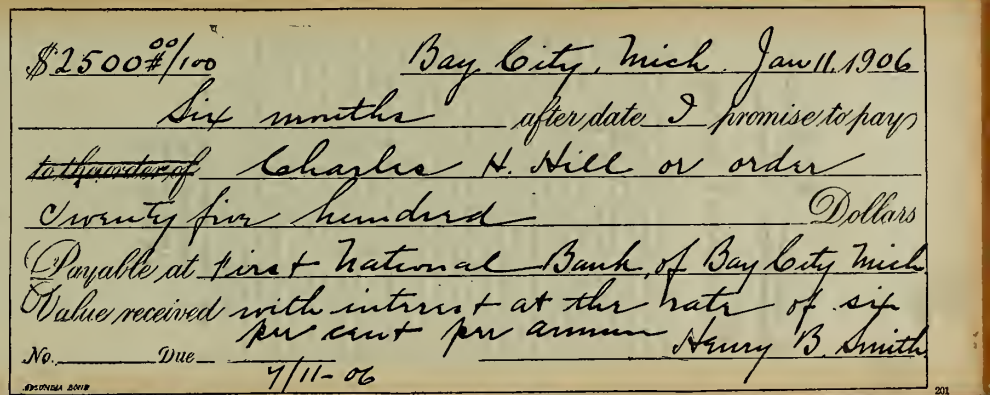
For text changes, see Illinois Rev. Stats. 1909, sec. 25, page 1538; Wisconsin Laws 1906, ch. 78, sec. 1676.

NO. 38.

CONSIDERATION.

e holder of a note as collateral security is a
der for value to the extent of the amount due him.

McMASTER'S COMMERCIAL CASES,
1909, PAGE 212A,
118 N. W. 726.



$2500^{00}/_{100}$ Bay City, Mich. Jan 11 1906

Six months after date I promise to pay
~~to the order of~~ Charles H. Hill or order
Twenty five hundred Dollars
Payable at First National Bank of Bay City Mich
Value received with interest at the rate of six
per cent per annum Henry B. Smith

No. _____ Due 4/11-06

WISCONSIN BOND

Charles H. Hill

Fred A. Bangs.

The maker of this note, Henry B. Smith, and the above indorser, Charles H. Hill, also the payee, were sued by Andrew J. Graham, who is the holder of this note. Hill proved that he delivered the note to the Mining Company, of which Fred A. Bangs was president, for stock in the company, having been fraudulently induced to buy this stock. The note was transferred by the company to Graham, the company being indebted to Graham in the sum of $5,000. Graham contended that this note was transferred to him in part payment of this indebtedness, while the defendants, Smith and Hill, contended that the note was transferred to the plaintiff, Graham, as collateral security for the pre-existing indebtedness. There is no question about Graham's right to recover, provided he is a holder for value. Under the law as it existed in the State of Michigan prior to the passage of the Negotiable Instruments Law, if it was true that he had received the note as collateral security for the pre-existing indebtedness, he would not have been a holder for value. The Supreme Court of Michigan held that he was a holder for value under the Negotiable Instruments Law, passed in that State in 1905. One section of the Negotiable Instruments Law provides that value is any consideration sufficient to support a simple contract, and that a pre-existing or antecedent indebtedness constitutes value.

McMASTER'S COMMERCIAL CASES.
1909. PAGE 212A.
118 N. W. 726.
SEE 102 U. S. 14.

Sec. 26. **What Constitutes Holder for Value.** Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. Cf. sec. 52.

NO. 39.

BONA FIDE HOLDER.

McMASTER'S COMMERCIAL CASES,
1909, PAGE 88A,
111 S. W. 888.

$ 750 ⁰⁰/₁₀₀

St Joseph Mo. May 21 1904

Six months after date I promise to pay

to the order of National Separator Company

Seven hundred and fifty and ⁰⁰/₁₀₀ Dollars

at St Joseph Mo

Value received

No. Due

Marshall Bruce

National Separator
Company by
E. L. Worthman,
Vice President
Rice Mc Donald
Penfield Investment Co
By A. H. Penfield, President

The Penfield Investment Company, the holder of this note, sued the maker, Marshall Bruce. Bruce executed the note to the order of the National Separator Company, who transferred it to Rice McDonald and the latter in turn transferred it to the plaintiff, Penfield Investment Company. The National Separator Company and the Penfield Investment Company are corporations and it was proved at the trial on the part of the defendant that A. H. Penfield, who was the president of the Penfield Investment Company, was also an officer and a director of the National Separator Company. The defendant proved that he made the note in consideration of the privilege of representing the National Separator Company in the county of Clinton, Mo., and that the note was paid out of the commissions which he received on the sales of machines made by the Separator Company and he also proved that if the note remained unpaid at the end of six months it was to be null and void and defendant was not to be liable for its payment. Notwithstanding this contract, which was in writing, the note was transferred as stated above. Judgment was rendered in favor of the defendant. Bruce, and the plaintiff appealed. The judgment was reversed because the trial court had refused to charge the jury that notwithstanding the fact that there was fraud in the inception of the note, and the payee, the National Separator Company, executed a contract in writing, by which it agreed not to transfer the note and notwithstanding the fact that A. H. Penfield, the president of the Penfield Investment Company, was also an officer of the National Separator Company and knew of the contract, still, unless his knowledge was acquired while acting as president, the Penfield Investment Company would not be charged with his knowledge.

The only theory upon which the Penfield Investment Company could recover was that it was an innocent holder for value, having acquired the note before maturity and without notice. The National Separator Company, the payee, could not recover against the maker, because of failure of consideration, but the Penfield Company could, provided it was an innocent holder for value before maturity. The defendant claimed that the Penfield Investment Company was a bona fide holder for the reason that the president of the Penfield Investment Company was also an officer of the National Separator Company and familiar with the circumstances under which the note was executed. The Appellate Court, however, held that unless the knowledge of the president of the Penfield Investment Company was acquired while acting as president of the Penfield Investment Company, his knowledge would not be the knowledge of the Company.

Sec. 27. **When Lien on Instrument Constitutes Holder for Value.** Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Sec. 28. **Effect of Want of Consideration.** Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

Sec. 29. **Liability of Accommodation Party.** An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

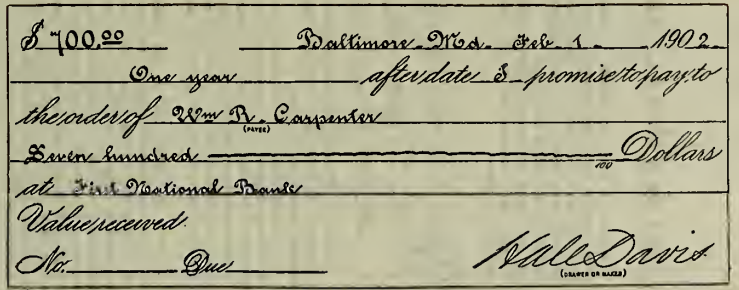
See Illinois Rev. Stats., page 1538, sec. 29.

No. 40.

ACCOMMODATION:

IRREGULAR PAPER.

McMASTER'S COMMERCIAL CASES,
1913, PAGE 102A,
N. I. L., SEC. 64.



$ 700.00 Baltimore Md. Feb 1 1902.

One year after date I promise to pay to

the order of Wm B. Carpenter
(PAYEE)

Seven hundred 00 Dollars

at First National Bank

Value received.

No. Due

Hall Davis
(DRAWER OR MAKER)

Nat. C. Chadwick

This note is drawn to illustrate an error often occurring where, as in this case, Carpenter, the payee, was to give Davis, the maker, the money on the note if Davis would procure Chadwick to indorse his, Davis' note.

In such cases the instrument should name Nat. C. Chadwick as payee, and he should indorse the note thus:

Pay to the order of
Wm R. Carpenter
Nat. C. Chadwick

This note is not invalid as now drawn, but it is irregular. In many states Chadwick would be called a co-maker, or a surety.

If Carpenter wishes to indorse and transfer the note as now drawn, he could write his indorsement under that of Chadwick. But even if it was written above Chadwick's—Carpenter could hold Chadwick as first indorser if he could show the facts as to the making of the note.

If one or more persons were to join Chadwick as accomodation indorsers for Davis in procuring the money of Carpenter, they can all be named as payees—thus showing without further proof that they are equally liable among themselves as indorsers. If they were not all named as payees and one indorsed above the others, as they have to, it might require proof to show that that the last indorser was equally liable with the others, as among themselves.

This rule applies to notes checks, drafts and bills of exchange.

NO. 41.

PARTNERSHIP INDORSEMENT ACCOMMODATION PAPER: RENEWAL.

Paper indorsed by one partner,—renewal note indorsed by other partner.

McMASTER'S COMMERCIAL DIGEST, PAGE 242 A.

$10,000.00 San Francisco, May 1, 1900.

Three months after date I promise to pay to the order of Heyler and Johnson

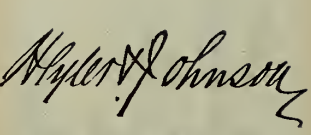
Ten Thousand Dollars

at First National Bank

Value received

No. _____ Due _____

B. P. Johnson.



The firm whose name was written above was composed of one Heyler and B. T. Johnson. In order to put more of his share of capital in the firm Johnson made a note of which this is a renewal. Heyler wrote the firm name as indorser on the original note thus binding himself. Johnson indorsed the firm name on this renewal. Heyler was thereby released, as one member of a firm cannot bind his partner by an accommodation indorsement.

McMASTER'S COMMERCIAL DIGEST.
PAGE 242A.
54 PAC. REP. 271.

Each member of a trading partnership has implied authority to sign and indorse commercial paper in the firm name, but this authority does not authorize such use of the firm name to accommodation paper.

"Where a partner makes a promissory note in his own name payable to the order of his firm, endorses the name of the firm on the note, and requests a bank to discount the note and place the proceeds of the discount to his personal credit on the books of the bank, the bank has notice of such irregularity as imposes on it the duty of inquiry as to whether the maker had authority from the firm to endorse the note with the firm name and procure its discount for his personal use."

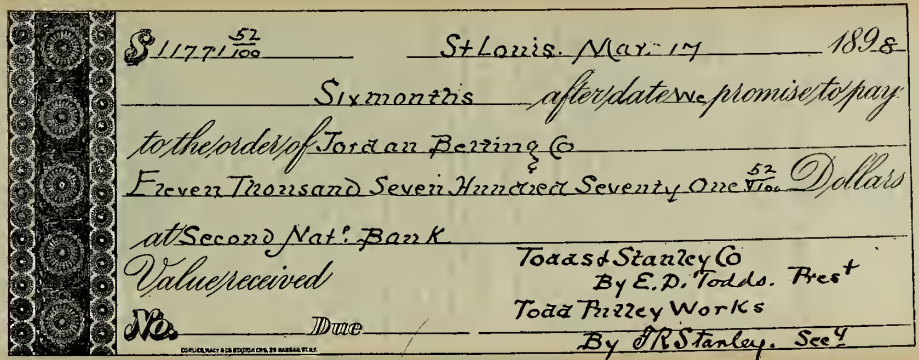
178 PA. 117.

No. 42.

CORPORATION: INDORSER: DIRECTORS: STOCKHOLDERS:

Power of directors and stockholders to bind the corporation by accommodation indorsement.

McMASTER'S COMMERCIAL DIGEST, PAGE 550 A.


$1177 51/100
St Louis. Mar 17
1898
Six months after date we promise to pay
to the order of Jordan Perring & Co
Seven Thousand Seven Hundred Seventy One 52/100 Dollars
at Second Nat' Bank
Value received
No.
Due
Todd & Stanley Co
By E. D. Todds. Prest
Todd Pulley Works
By J. R Stanley. Secy

Indian Refining Co
The Indian Lubricants

The first of the corporations that signed this note was the real debtor,—the second corporation being surety. This second corporation signed as surety in accordance with a resolution passed at a stockholders meeting.

But it was held by the courts that it was beyond the power of the stockholders or directors to bind the corporation by such a contract.

As a matter of fact the stockholders and directors of the two corporations were identical, and indiscriminately used each others credit and property, although they were located in adjoining states.

McMASTER'S COMMERCIAL DIGEST, PAGE 550 A; 86 N. E. REP. 1017.

The followiog quotation is from 116 N. Y. 281, where a corporation was sued as an accommodation iodorser of a promissory note:

"The statute by which the defendant (corporation) was incorporated provided that, in addition to the powers therein enumerated, it shall possess all the powers and privileges of corporations organized, under the manufacturing act. The litigants agree that the defendants' board of directors has power to authorize its president to make and indorse promissory notes for the purpose of transacting the business it was authorized to engage in, and that such power was conferred by the board on its president. Counsel have not directed our attention to, nor have we found in any of the statutes referred to, a provision empowering the defendant (corporation) to bind itself by making or indorsing promissory notes for the accommodation of the makers for a consideration paid. The fact that the maker of a promissory note procures it to be discounted for his own benefit is, if unexplained, notice to the discounter that the indorsement is not in the usual course of business, but is for the accommodation of the maker.

"The indorsement having been made for the accommodation of the maker, and the plaintiff, having discounted the notes with notice of that fact, cannot recover."

No. 43.

POWER OF ATTORNEY: AGENT.

Power to sign and indorse notes, does not convey ower to do so for the accommodation of third arties.

McMASTER'S COMMERCIAL DIGEST, PAGE 261 A; 30 S. E. REP. 842.

$500 Atlanta. Ga. Aug 4 1900

Six months after date I promise to pay to the order of B. J. Myers

Five Hunared Dollars

at First Nat' Bank

Value received.

J. N. Myers

No. Due.

CRANE'S BOND

B. J. Myers.
By F. J. Myers.
Attorney

F. J. Myers had a written power of attorney from B. J. Myers, authorizing him to sign and indorse notes in the name of B. J. Myers.

The above indorsement was made as an accommodation for the maker, and it was held that it would not bind B. J. Myers.

The court said it was well settled that authority to an agent to make and indorse notes, was not authority to do so for the use of third parties.

McMASTER'S COMMERCIAL DIGEST, PAGE 281 A;
30 SO. E. REP. 842.

Power to draw checks would not bind principal on checks which overdrew the account.
39 BARS, 180.

Cases where agent with power to execute paper exceeded his authority: 24 Iowa, 99; 3 Mont. 146; 50 Mo. 174; 64 Cal. 410; 9 Ala. 279; 38 Mo. 228; 8 N. Y. 398; 61 N. H. 612; 12 Minn. 298; 13 Mass. 178.

No. 44.

COLLATERAL:
CHANGE OF TITLE:
INDORSER.

Indorser released, for reason that owner of note consented to change of title and possession of collateral, although same amount and kind of lien was retained.

McMASTER'S COMMERCIAL DIGEST,
PAGE 327 A;
95 NO. E. REP. 93.

$4000 Sheaton, Ill., Oct. 27th, 1897.

Four months after date I promise to pay
to the order of Ira I Holmes
Four Thousand Dollars
at 1st Nat. Bank
Value received
No. Due R. F. Wallace

Ira J Holmes
V B Holmes

The owner of this note knew that V. B. Holmes was an accommodation indorser.

Before the note came due the maker of the note desired to sell the furniture to another party, who gave a new mortgage thereon, which was turned over as security for this note. This was done with the consent of the first indorser and the holder of the note.

This released the accommodation indorser.

McMASTER'S COMMERCIAL DIGEST.
PAGE 327A.
93 N. E. REP. 93.

The holder of a note cannot consent to a change of ownership and custody of collateral without releasing indorsers who do not consent thereto.

ARTICLE III.

NEGOTIATION.

Sec. 30. **What Constitutes Negotiation.** An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the tranferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

NO. 45.

HOLDER: NEGOTIATION:

PAYMENT OF A CHECK.

Distinction drawn between "payment" and "negotiation" of a check.

McMASTER'S COMMERCIAL CASES.
1911, PAGE 79A.
129 N. W. 279.

No. 841 GILTNER, NEB. 2/29/1906

Pay to the order of M. Wagner, $573.80, five hundred seventy-three 80/100 dollars.

Gross For 50 30 per bu.

Tare Hayes-Ramos Elevator Co.

Net lbs.

Net 1 A 12 10 bus. 57654

O E Bedell

Protested for non payment this 5th day of March 1906
Chas Closser
Notary Public

M. Wagner
A. M. Glover

When the bank of Bromfield paid the check to the person named therein it was not a "holder" within the meaning of section 30. The payment extinguished the instrument.

It will be observed by an examination of the check that the name of the drawee (bank) is not indicated therein at all. See N. I. L., sec. 1, cl. 5.

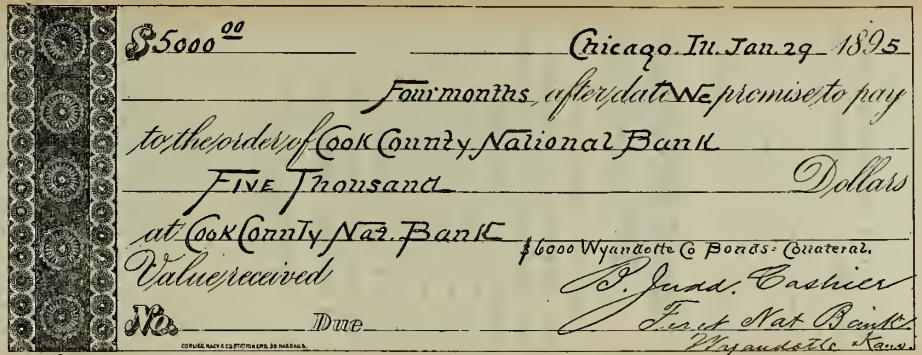
McMASTER'S COMMERCIAL CASES.
1911, PAGE 79A.
129 N. W. 279.

NO. 46.

GUARANTY: INDORSEMENT

...rtain guaranty held to destroy the negotia... ...ity of a note.

McMASTER'S COMMERCIAL DIGEST,
PAGE 13A,
101 U. S. 66.


$5000 00
Chicago. Ill. Jan. 29 1895
Four months after date We promise to pay
to the order of Cook County National Bank
Five Thousand Dollars
at Cook County Nat. Bank
6000 Wyandotte Co Bonds: Collateral.
Value received
No. Due
P. Judd. Cashier
First Nat Bank
Wyandotte Kans.

For value received we hereby guarantee the payment of the within note at maturity or at any time thereafter, with interest, and agree to pay all costs and expenses incurred in collecting the same.

Fok Co Nat Bank
B F Allen. Pres't

The U. S. Supreme Court said that the above guaranty was not equivalent to an indorsement; that it made the note non-negotiable, and that, although the purchaser took it for value and before maturity, the maker could set up against it any defences that he could have set up if it had not been transferred.

McMASTER'S COMMERCIAL DIGEST, PAGE 13A; 101 U. S. 68.

Sec. 31. Indorsement; How Made. The indorsement must be written on the instrument itself or on a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

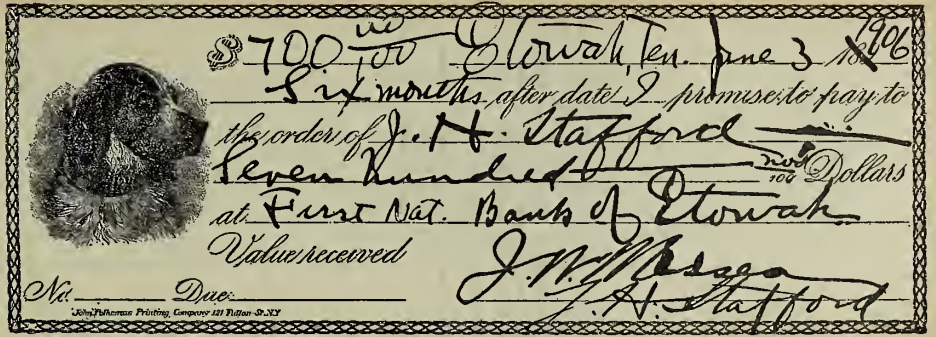
For text changes, see Illinois Rev. Stats. 1909, sec. 31.

No. 47.

INDORSEMENTS.

The very meaning of the word "indorsement" signifies "on the back."

McMASTER'S COMMERCIAL CASES,
1912, PAGE 14A
71 S. E. 148.


$700 00/100 Etowah, Ten. June 3 1906
Six months after date I promise to pay to
the order of J. H. Stafford
Seven Hundred 00/100 Dollars
at First Nat. Bank of Etowah
Value received
No. Due:
J. H. Stafford
John Fuhrmann Printing Company 121 Fulton St. N.Y.

This note was made out to one J. H. Stafford. In transferring the same Stafford wrote his name on the face thereof as it appears in this copy, instead of on the back. Such writing of his name by Stafford was held to constitute a sufficient indorsement

McMASTER'S COMMERCIAL CASES.
1912. PAGE 15A.
71 S. E. 148.

Sec. 32. **Indorsement Must Be of Entire Instrument.** The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payble, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Sec. 33. **Kinds of Indorsement.** An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

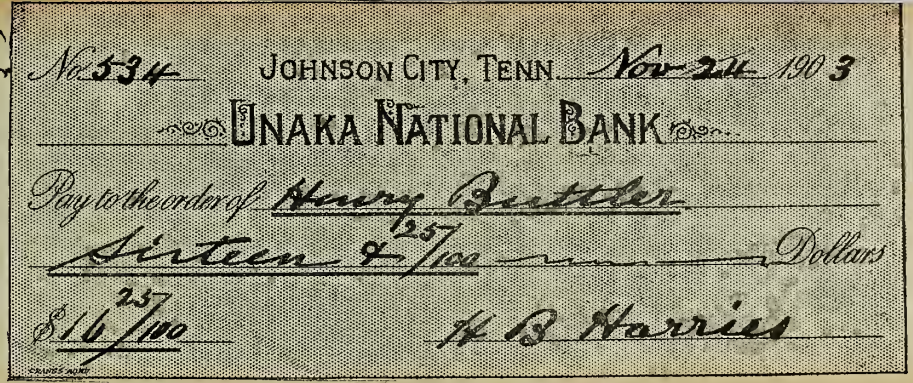
Sec. 34. **Special Indorsement; Indorsement in Blank.** A special indorsement specifies the person to whom, or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery. Cf., sec. 9.

No. 48.

INDORSEMENT IN BLANK:

TITLE.

McMASTER'S COMMERCIAL CASES, 1905, PAGE 181A.



No. 534 JOHNSON CITY, TENN. Nov 24 1903

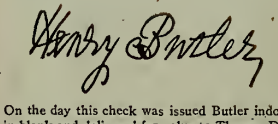
UNAKA NATIONAL BANK

Pay to the order of Henry Buttler

Sixteen 25/100 Dollars

$16 25/100

H B Harries



On the day this check was issued Butler indorsed it in blank and delivered for value to Thomas Davis, who lost it on the highway.

The next day the maker of the check and Davis notified the bank of these facts and instructed it not to pay the check. Soon after this the check was presented by another party to Ward & Fryberg, and they in good faith gave him the money it called for.—and the bank then paid the amount to Ward & Fryberg. An action was brought against the bank, for the amount, for the benefit of Davis. The bank was beaten in the trial court, but won on appeal.

The check was a negotiable instrument indorsed in blank, and Ward & Fryberg, as innocent purchasers, got good title to it, and when they got title Davis' title was extinguished.

The bank need not have paid the check, and, if it had refused, Ward & Fryberg could not have maintained an action against it, as such is the rule, except in a few States (a *holder* of a check in States where the negotiable instruments law is in force has no right of action against a bank for refusal to pay a check—the maker alone has such right). A bank pays at its peril a check on which the maker has stopped payment; but if the person presenting such check is a bona fide holder—has indefeasible title to it, the bank would doubtless take his title to it in taking it and could enforce it against the maker—and one way of doing this would be to charge it to his account. But the maker of this check did not appear in this litigation, and this latter point was not raised or decided.

If the holder of a negotiable instrument takes it for value and in good faith, from a thief, he can enforce it or he can pass his indefeasible title to one who knew of the theft, and the latter can enforce it.

McMasters Com. Cases, Vol. 1905 83 S. W. 655.

Sec. 35. **Blank Indorsement; How Changed to Special Indorsement.** The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Sec. 36. **When Indorsement Restrictive.** An indorsement is restrictive which either:

1. Prohibits the further negotiation of the instrument; or

2. Constitutes the indorsee the agent of the indorser; or

3. Vests the title in the indorsee in trust for or to the use of some other person.

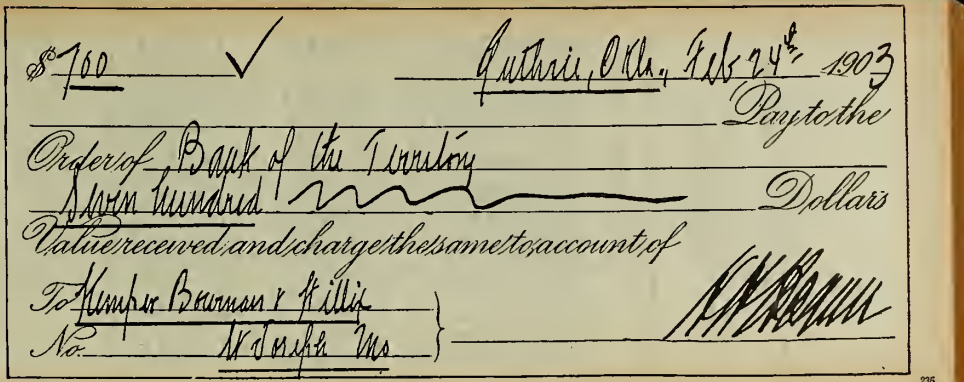
But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

No. 49.

RESTRICTIVE INDORSEMENT.

Indorsement for collection. Sec. 36, Clause 2.

McMASTER'S COMMERCIAL CASES,
1095, PAGE 135A,
83 S. W. 537.


$ 700 ✓ Guthrie, Okla., Feb 24th 1903
Pay to the
Order of Bank of the Territory
Seven Hundred Dollars
Value received and charge the same to account of
To Kemper Bowman & Hillis
No. Wichita Kans.

"Pay to any bank or banker or order; all previous indorsements guaranteed.
Bank of the Territory; Guthrie, Okla."

"Union Bank of Kansas City, Mo., or order; previous indorsements guaranteed.
Fifth National Bank, Wichita, Kan."

"Pay order of any bank or banker; all previous indorsements guaranteed.
Union Bank, Kansas City, Mo."

This draft was paid to the First National Bank, March 3d, by Kemper, Bowman & Hillix, under the belief that Hagan, who had no credit with them, had shipped them some cattle. It was paid by their check on another bank, and the amount was placed to the credit of the bank from whom the First National Bank received it. On the morning of March 4th, it was ascertained that Hagan had killed himself and that he had shipped no cattle, and K. B. & H. induced the First National Bank to return the money, cancel the credit and protest the draft. This the court said could not be done against the objection of the Bank of the Territory, which had paid Hagan the amount of the draft before it was paid.

It was held in effect in 42 N. Y. 538; 52 N. Y. 545, that if the bank had surrendered the draft to K. B. & H.—taking their check in payment and credited the proceeds to the owner, and then had promptly ascertained that the check was worthless, that they could have demanded the return of the draft—and protested the draft, whether returned or not, and cancelled the credit,—but, of course, this case presents different facts.

The court here decided that the indorsement

"Pay to any bank or banker or order"

is an indorsement for collection—a restrictive indorsement—one that does not pass title to the instrument nor bind the indorser to the liabilities of an ordinary indorser. This decision means that the form of indorsement—"Pay to any Bank or Banker", which is growing in use, is as objectionable as the long since rejected form "Pay to First National Bank or order for collection for account of, &c."

McMasters Com. Cases, Vol. 1905, 83 S. W. 537.

Sec. 37. **Effect of Restrictive Indorsement; Rights of Indorsee.** A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument;

2. To bring any action thereon that the indorser could bring;

3. To transfer his rights to such indorsee, where the form of the indorsement authories him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

For additions and changes in text, see Illinois Rev. Stats. 1909, sec. 37.

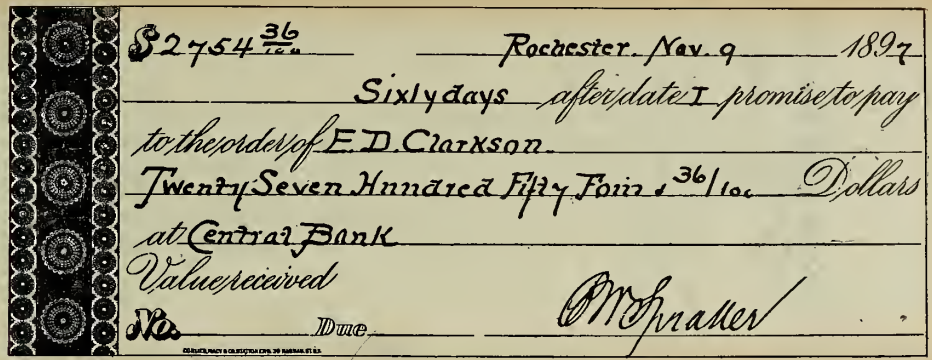
Sec. 38. **Qualified Indorsement.** A qualified indorsement constitutes the indorser a mere assignor of the title of the instrument. It may be made by adding to the indorser's signature the words "without recourse," or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

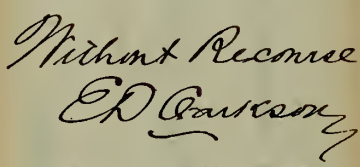
No. 50.

WITHOUT RECOURSE: WARRANTY.

Warranty of one who indorses "without recourse."

McMASTER'S COMMERCIAL DIGEST, PAGE 137A.
KAN. 137, 20 N. Y. 228, 48 VT. 508, 27 ME. 225, 38 IOWA, 329.


$2754 36/100
Rochester. Nov. 9 1897
Sixty days after date I promise to pay
to the order of E. D. Clarkson.
Twenty Seven Hundred Fifty Four 36/100 Dollars
at Central Bank
Value received
No. Due.
O. M. Spraker



A person indorsing "without recourse" is held as a guarantor unless he negatives by apt written language.

Sec. 39. Conditional Indorsement. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or this transferee whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, suject to the right of the person indorsing conditionally.

Sec. 40. Indorsement of Instrument Payable to Bearer. Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

For variation in text, see Rev. Stats. 1909, sec. 40.

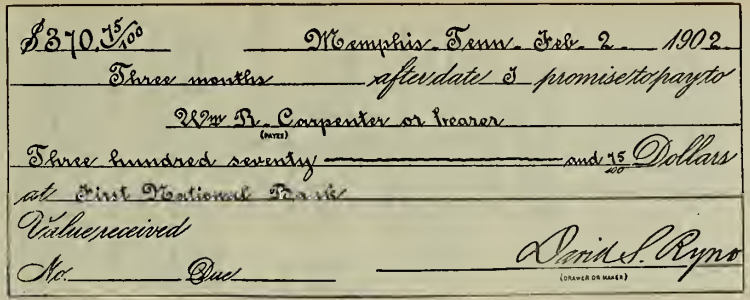
NO. 51

PAYABLE TO BEARER:

EFFECT OF INDORSEMENT.

Once a bearer instrument a special indorsement does not change its character.

McMASTER'S COMMERCIAL CASES, 1913, PAGE 77.


$370.75/100 Memphis, Tenn. Feb. 2 1902.

Three months after date I promise to pay to

Wm B. Carpenter or bearer

(NOTE)

Three hundred seventy and 75/100 Dollars

at First National Bank

Value received

No. Due

David S. Rypo

(DRAWER OR MAKER)

This note is payable to "bearer," and no indorsement *of any kind* by Carpenter or any subsequent holder can make it a note payable "to order." The title to it passes by mere delivery. But if Carpenter or any subsequent holder wrote his name on the back of the note he would be liable as indorser.

If Carpenter or any holder should write an indorsement on the back of this note in general form as follows—

Pay to the order of
S. P. Curry
W. R. Carpenter

this would be termed an "indorsement in full" or a "special indorsement,"—but it would not restrict the transfer of the note—it is yet payable to bearer.

Or if Carpenter or any holder should indorse in the following manner:

Pay only to P. Colegrove
for collection for
my account.
W. R. Carpenter

this would be termed a "restrictive indorsement," but it would not restrict the negotiation of this particular instrument—it would be yet payable to bearer—but these rules do not apply, of course, to instruments originally payable "to order."

These rules apply to notes, checks, drafts and bills of exchange.

In Illinois a negotiable instrument payable to "A or bearer" requires the indorsement of A. This has been held in Alabama, Arkansas and Missouri, but such indorsement is not required elsewhere.

Sec. 41. **Indorsement Where Payable to Two or More Persons.** Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

Text change, **Missouri** Rev. Stats. 1909, ch. 86, sec. 10011. **Wisconsin** Laws 1906, ch. 78, sec. 1687.

Sec. 42. **Effect of Instrument Drawn or Indorsed to a Person as Cashier.** Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

NO. 52.

CORPORATION NOTE:

PAYEE.

McMASTER'S COMMERCIAL CASES,
1914, PAGE 76A,
136 PAC. 416.

$2,000 June 15th 1907

On Dec 31st 1907 I promise to Pay to
the order of the directors of the F. X. Sim and Mill Co.
of Stratford, I.T. Two Thousand Dollars

Value received

T. J. Walker

F. H. Gin & Mill Co.
by S. W. Merrill
Secy Treas.

It was contended that the above endorsement did not carry title to the note which was made out to the "directors of" the company. The defendant argued that all the directors should have endorsed the note. The court held that the note was a corporation note and that the secretary and treasurer having authority to endorse a note of the corporation, this endorsement was sufficient.

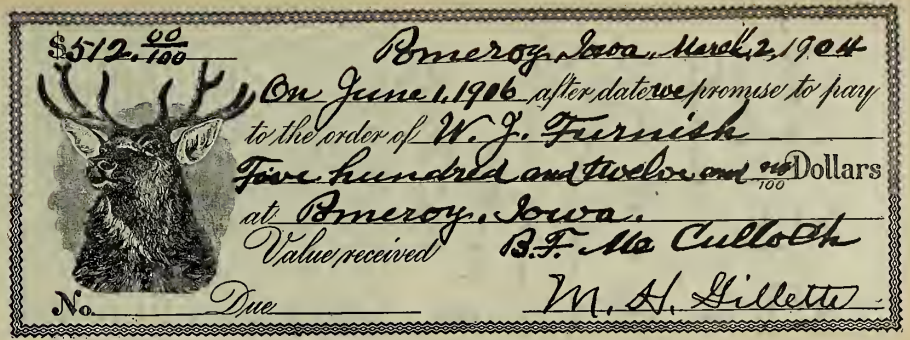
136 PAC. 418.

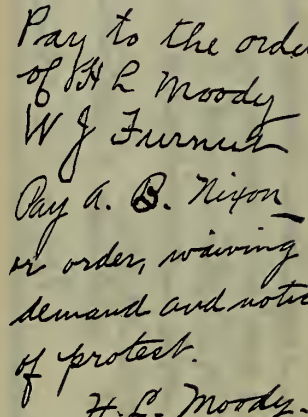
No. 53.

TRANSFER BY INDORSEMENT.

Transfer to a cashier without a designation of his ation.

McMASTER'S COMMERCIAL CASES, 1908, PAGE 279A, 93 PAC. 366.


$512.00/100
Pomeroy, Iowa, March 2, 1904
On June 1, 1906 after date we promise to pay
to the order of W. J. Furnish
Five hundred and twelve and 00/100 Dollars
at Pomeroy, Iowa.
Value received B. F. McCulloch
M. A. Gillette
No.
Due



The makers of this note, B. F. McCullough and M. H. Gillette, had a perfectly good defense against the payee, W. J. Furnish. Furnish indorsed the note to H. L. Moody, who was also cognizant of the defense of the makers. Moody transferred the note by indorsement to A. B. Nixon, who was the cashier of the First National Bank of Pomeroy, the plaintiff in this action. The Negotiable Instruments Law provides that "when an instrument is drawn or indorsed to a person as 'cashier,' or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation, of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer." If the word cashier had been added after the name of A. B. Nixon, there would be no question but that the note would have been indorsed to the bank, but parol evidence is inadmissible to vary the terms of a written contract and as no official designation was added to Nixon's name, it was a transfer to him individually. The bank consequently held this note without indorsement. They were entitled to sue but they were mere assignees and as such took no better title than the prior indorsers, who took with notice of the failure of consideration. The note having been transferred to the bank without indorsement, created the bank a mere assignee or transferee, and not an indorsee or holder under the Negotiable Instruments Law.

Sec. 43. **Indorsement Where Name is Misspelled or Wrongly Designated.** Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

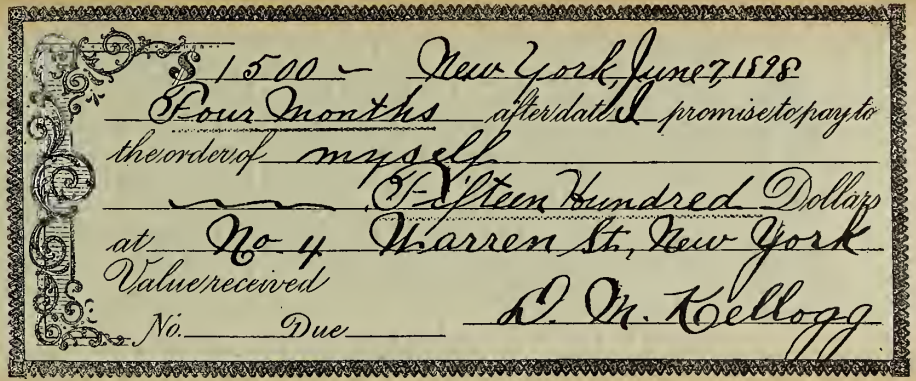
Sec. 44. **Indorsement in Representative Capacity.** Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability. Cf. sec. 20.

Sec. 45. **Time of Indorsement; Presumption.** Except where an indorsement bears date after maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. Cf. sec. 52.

Sec. 46. **Place of Indorsement; Presumption.** Except where the contrary appears, every instrument is presumed prima facie to have been made at the place where the instrument is dated.

No. 54.

INDORSED WHERE DATED:


$1500 — New York, June 7, 1858

Four Months after date I promise to pay to the order of myself

Fifteen Hundred Dollars

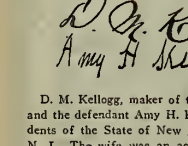
at No. 4 Warren St., New York

Value received

No. Due

D. N. Kellogg

McMASTER'S COMMERCIAL CASES.



D. M. Kellogg, maker of the promissory note in suit, and the defendant Amy H. Kellogg, his wife, were residents of the State of New Jersey, living at Oak Tree, N. J. The wife was an accommodation indorser, and signed her name on the back of the note at her residence, at the request of her husband and for his use and benefit.

The plaintiff, the Chemical National Bank, of New York, discounted the note in the usual course of business, and had no knowledge that the indorsement of Amy Kellogg was made in another State, and used the proceeds to take up a prior note held by it.

The defendant did not authorize the discount of the note in New York State, and did not know that it was to be negotiated there.

Under New Jersey laws a married woman is not liable as an accommodation indorser, guarantor, or surety, unless it is shown that she or her separate estate have profited by such contract.

The laws of the State of New Jersey do not allow a married woman to become a simple accommodation indorser, but in New York State the woman is on a business level with the man, and a married woman may even contract with her husband. It is the general rule laid down by the courts of New York to give force to a contract in accordance with the laws of the State where it was made. Amy Kellogg having indorsed this note in the State of New Jersey, under ordinary circumstances her contract would be governed by the laws of that State. But plaintiff acquired the note in the due course of business. It was dated in New York, and to be paid in New York. So far as appeared to the bank, front or back, the note was a New York contract for all parties. The Negotiable Instruments Law, which is in force in New York State, provides in this connection that: "Except where the contrary appears, every indorsement is presumed, prima facie, to have been made at the place where the instrument is dated." Laws 1897, ch. 612, § 76." The Court of Appeals decided for plaintiff.

Sec. 47. **Continuation of Negotiable Character.** An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Sec. 48. **Striking Out Indorsement.** The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

Sec. 49. **Transfer Without Indorsement; Effect of.** Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

For text changes, see Colorado Laws 1897, ch. 64, sec. 49; Missouri Rev. Stats. 1909, ch. 86, sec. 10019; Illinois Rev. Stats. 1909, page 1565, sec. 49; Wisconsin Laws 1906, ch. 78, sec. 1695.

No. 55.

INDORSEMENT:
NEGLECT TO INDORSE NOTE PAYABLE TO ORDER:
PARTNERSHIP SIGNATURE.

Purchaser of note payable "to order,"—which payee has neglected to indorse, gets title to the note, but he takes it as a non-negotiable instrument,—subject to the offsets of the maker.

McMASTER'S COMMERCIAL DIGEST, PAGE 514 A; 91 N. W. REP. 765.

$600- Huntington Ind. Apr. 4 1898

Six months after date we promise to pay

to the order of W. D. Godwin & Son

Six Hundred Dollars

at First Nat'l. Bank

Value received

No. Due

J. M. Thompson

E. T. Thompson

COTTRELL, LEACY & CO. ELECTROTYPERS, 39 HARRISON ST.

W. D. Godwin
A. S. Godwin

The two indorsers above comprised the firm of W. D. Godwin & Son — the payees of the note.

They indorsed the note as above and sold it to a bank. Although the bank got good title to the note — it took it as a non-negotiable instrument subject to the offsets and defenses of the maker. As this note was not indorsed by the firm and with its signature the court said: "If a promissory note payable to the order of a party is transferred without his indorsement the holder takes it as a mere chose in action."

McMASTER'S COMMERCIAL DIGEST.
PAGE 514A.
81 N. W. REP. 765.

Sec. 50. **When Prior Party May Negotiate Instrument.** Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this Act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

ARTICLE IV.

RIGHTS OF HOLDER.

Sec. 51. Rights of Holder to Sue; Payment. The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

Sec. 52. What Constitutes a Holder in Due Course. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular on its face;

2. That he became holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

3. That he took it in good faith and for value;

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

For text change, see Wisconsin Laws 1906, ch. 78, sec. 1677.

No. 56

BONA FIDE HOLDER:

BAD FAITH: THE TEST.

The duty of inquiry does not rest upon the purchaser of commercial paper to avert the imputation of bad faith. The rights of the holder are to be determined by the simple test of honesty and good faith and not by the issue as to his intelligence or ignorance.

34 N. Y. 247.
McMASTER'S COMMERCIAL CASES, 1909, PAGE 35A.
95 PAC. 785.

FOURTH NATIONAL BANK OF DAYTON, OHIO.

$ 700.00/100 Dayton, Ohio, April 4th, 1904

Thirty days after date Pay to the

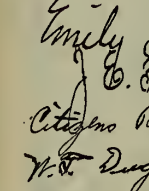
Order of Emily Smith

Seven hundred and no/100 Dollars

To Hanover National Bank,
New York, N. Y.

No.

Charles Adsit
Cashier



Emily Smith transferred this draft by her blank indorsement to J. E. Forbes in payment for real estate which she had purchased of him. Forbes indorsed the draft in blank and deposited the same with the Citizen's Bank of Enid, Oklahoma. On April 19th, 1904, the Citizen's Bank of Enid, Oklahoma, indorsed the note and transferred it to the First National Bank of Enid, who is the holder and the plaintiff in this action, which was brought against all of the prior parties to the note, but only Forbes and the Citizen's Bank receiver were served. The note was transferred to the First National Bank of Enid by the Citizen's National Bank of Enid in settlement of a day's balances and it was shown that the Citizen's Bank, on the day on which this note was transferred, was in a failing condition and the First National Bank knew that the bank was in a failing condition. The First National Bank paid value for the note in that it received it as collateral security for an antecedent indebtedness. It received the note in due course and before maturity and if it was a purchaser in good faith, there is no doubt that it should recover from the prior parties to this note. It was not proved that the First National Bank knew in what manner the draft in suit was acquired by the Citizen's Bank from Forbes and in any event suspicion of defect of title, or the knowledge of circumstances which would excite suspicion in the mind of a prudent man are not the tests, but the test is did the purchaser in purchasing the note do so in good faith? Guilty knowledge and willful ignorance alike involve the result of bad faith. The mere fact that the First National Bank knew that the Citizen's Bank was in a failing condition, would not necessarily create the suspicion on the part of the First National Bank that the Citizen's Bank had acquired this draft fraudulently. There was nothing to indicate that the Citizen's Bank was not the holder of this draft, and had Forbes desired to make it appear that he still had an interest in the draft, he could have indorsed the draft for collection or for deposit. The court rendering this decision said Forbes had placed it in the power of the Citizen's Bank to transfer the draft as a negotiable instrument, and where one of two equally innocent parties must suffer, the one who has placed it in the power of the third party to do wrong must bear the consequence.

McMASTER'S COMMERCIAL CASES.
1909, PAGE 35A.
98 PAC. 785.

No. 57.

INDORSEMENT:
BONA-FIDE PURCHASER.

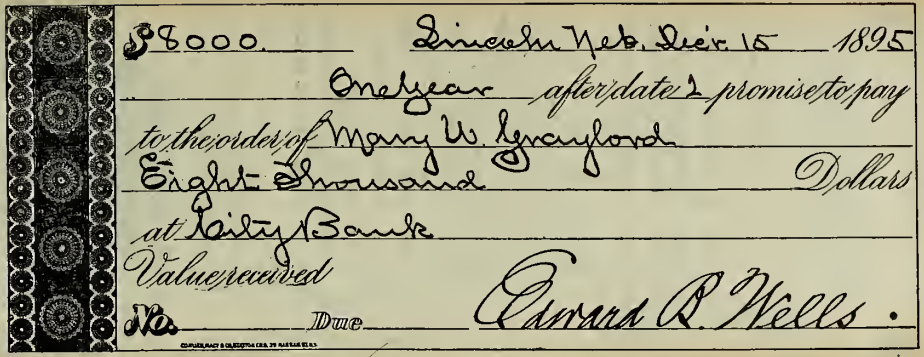
An indorsement as follows was held not to be a ...k indorsement, and to be evidence that the ...rser was yet the owner of the note:

"Pay to the order of

_____

MARY W. GRAVLORD."

McMASTER'S COMMERCIAL DIGEST,
PAGE 114A;
74 ND. W. REP. 415.



Pay to the order of

Mary W Graylord

Mrs. Mary W. Graylord sent this note, indorsed as above to her son, to be sold for her account when a purchaser was found.

The son pledged it to a bank as security for a loan to his firm. The bank got no title or interest in the note as against Mrs. Graylord, although they took it in good faith believing it belonged to the son,--the court saying that the indorsement in the above form was notice to the world that Mary W. Graylord had not yet parted with title to the note.

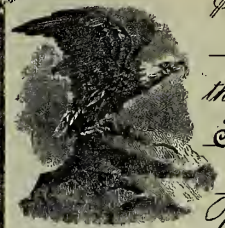
McMASTER'S COMMERCIAL DIGEST, PAGE 111 A.
74 N. W. REP. 215;
SEE ALSO 239 A; 63 N. Y. 307.

No. 58

BONA-FIDE HOLDER:
CENT'S DRAFT ON HIS PRINCIPAL.

tance where bank could have safely given
nt money for draft, but lost its money by giving
nt credit for it in his individual name.

McMASTER'S COMMERCIAL DIGEST
PAGE 1524.



$4,200.00 Tacoma, Wash. April 5, 1900.

At sight Pay to

the order of Fidelity Trust Co

Four thousand two hundred Dollars

Value received and charge the same to account of

To Treas. Nor. Pac. Ry. Co

No ____ New York.

Geo. Schlichting
Gen'l Land Agent

Paul Schultze was the Land Agent of the Nor. Pac. Ry. Co., and the court said that the Fidelity Trust Co. had lawful reason to believe that he could bind the company by this draft, and if the bank had given him money for it they would have been protected, as the presumption would then have been that he was to use the funds for the benefit of his principal; but at Schultze's request the Trust Company gave him a certificate of deposit for it in his individual name, thus having notice that the agent was using the agency name for his own purposes. The bank lost the money.

McMASTER'S COMMERCIAL DIGEST, PAGE 152 A.
84 FED REP. 841.

"It is an acknowledged principle of the law of agency that a general power or authority given to an agent to do an act in behalf of the principal does not extend to a case where it appears that the agent himself is the person interested on the other side."

143 N. Y. 564; 139 N. Y. 146; 152 U. S. 346; 78 CAL. 289; 26 N. Y. 223; 41 MICH. 169.

No. 59.

BONA-FIDE HOLDER: CREDIT.

Bank does not become bona-fide holder by simply crediting a note to the indorser's account.

McMASTER'S COMMERCIAL DIGEST, PAGE 415A; 67 N. W. REP. 1108.

$920 Bay City, Mich. April 6 1898

Six months after date I promise to pay

to the order of F. W. Moore

Nine Hundred & Twenty Dollars

at Second Nat Bank

Value received

No. Due

Wm. T. Williams

CORLISS, MACY & CO. STATIONERS, 39 KILBY ST. BOS

P. M. Moore.

If a bank discounted this note for Moore and gave him credit for the proceeds, and they were subsequently informed by the maker that the note was procured by deceit and fraud, the bank would, at its peril, pay Moore the balance of the undrawn credit. The bank would be a bona-fide holder only to the extent of the credit drawn out.

McMASTER'S COMMERCIAL DIGEST.
PAGE 415A.
67 N. W. REP. 1105.

116 MICH. 31. 18 HUN. 417. 30 KAN. 441.
71 WIS. 309. 93 PA. ST. 227.
114 PA. ST. 216.

"We think the authorities fully sustain the proposition that a bank does not become a purchaser of negotiable paper by discounting the same for one not indebted to it at the time, and merely placing the amount which the assignor is to receive to his credit by way of deposit."

"The bank parted with nothing of value to the payee in said notes, but merely extended additional credit to the said payee. Until it appears that said credit was used, and the bank account drawn upon or exhausted by the said payee, the bank has parted with nothing of value."

57 N. E. 6.

Sec. 53. **When Person Not Deemed Holder in Due Course.** Where an instrument is defective within the meaning of this Act when he of time after its issue, the holder is not deemed a holder in due course.

Sec. 54. **Notice Before Full Amount Paid.** Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

Sec. 55. **When Title Defective.** The title of a person who negotiates an instrument payable on demand is negotiated an unreasonable length obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

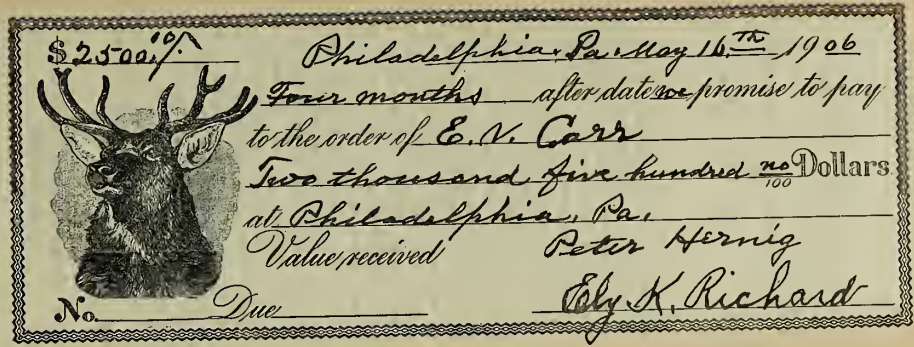
For variation in text, see Kansas Laws 1909, ch. 84, sec. 55; Wisconsin Laws 1906, ch. 78, sec. 1681.

NO. 60.

DEFECTIVE TITLE.

Carr made a fraudulent use of the note and the bank had notice that his title was defective before it discounted it.

McMASTER'S COMMERCIAL CASES.
1909, PAGE 15A.
69 ATL. 679.



Pay to the order
of Bank of Morehead
E. V. Carr.

This note was executed to E. V. Carr for his accommodation by Peter Hernig and Ely K. Richard and by him indorsed to the plaintiff in this action, the Bank of Morehead. The affidavit of defense of the makers, Hernig and Richard, who were sued by the indorsee above named, set up that two notes, one dated May 11th and one May 16th, were made to Carr for his accommodation by the defendants, and he was not to use the last one if he succeeded in having the first one discounted. The first one was discounted and paid by the defendant Hernig, and Carr was asked by the defendants for the second one and stated that he had left it in Kentucky and would return it. The plaintiff bank made an inquiry of defendant Hernig in regard to this note in suit, and Hernig told the bank that the makers did not owe Carr any money and not to advance any money to Carr on the note. The affidavit further states that no money, if any, had been advanced up to the time the bank made this inquiry. The court of original jurisdiction held that the affidavit of defense was insufficient, but the Appellate Court held that the affidavit was sufficient and that if it was proved that the plaintiff bank had notice of all the facts which are set forth in the affidavit of defense it would not be an innocent holder for value, and that if it advanced any consideration after the notice, it would not be protected except to the extent of the consideration advanced before notice was given that there was a defect in the note.

McMASTER'S COMMERCIAL CASES,
1909, PAGE 15A.
69 ATL. 679.

Sec. 56. What Constitutes Notice of Defect. To constitute notice of an infirmity in the instrument or defect in title of person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action on taking the instrument amounted to bad faith. Cf. sec. 52, cl. 4.

NO. 61.

PARTNERSHIP:
PAYMENT OF INDIVIDUAL DEBT WITH FIRM'S CHECK.

McMASTER'S COMMERCIAL DIGEST
PAGE 205 A;
43 S. W. REP. 465.
12 PET. 221.

No. 2756 Buffalo N.Y. Nov 5 1900

City National Bank

Pay to the order of N.N. Scraton

Seven Hundred & Seventy Dollars.

$770# Wardner & Co.

This check was signed by Wardner, the senior member of Wardner & Co., and if Scraton received it in payment of an individual indebtedness against Wardner, he would be liable to the partners of Wardner if the latter concealed the transaction from his partners and did not account to them for the amount.

McMASTER'S COMMERCIAL DIGEST, PAGE 205A; 12 PET. 221.

"One who receives checks of a corporation executed by its secretary and treasurer in payment of his individual indebtedness, is liable to the corporation for the amount thereof, unless he shows that the corporation either directly or inferentially assented thereto.

"It is well settled in this and other states that one partner cannot give a partnership check, without the assent of the other partners, in payment of his individual debt. Rogers v. Betterton, 93 Tenn. 630, 27 S. W. 1017, and authorities cited. So it has been held by the Supreme Court of the United States that one partner cannot use the partnership funds to pay his pre-existing debts without the consent, express or implied, of the other partners, and in such case a partnership creditor may recover from the party receiving the fund, although the party did not know that he had received partnership funds. Rogers v. Batchelor, 12 Pet. 221; Dob v. Halsey, 16 Johns. 34."

42 S. W. 466.

NO. 62.

PARTNERSHIP: BONA-FIDE HOLDER.

...ee who takes in payment of an individual ..., the check of a firm, signed in the firm name ...the debtor who is a member of the firm,—takes ...with notice that a partner cannot use partner... ...p property to pay individual debts.

McMASTER'S COMMERCIAL DIGEST. PAGE 205A; 12 PET. 221.

No. 9756 Sandusky, Ohio, Oct 1. 1900

Second National Bank

Pay to the order of James Williams, Cashier

Fifteen Hundred Dollars.

$1500. White & Bell

Paid--Oct. 2, 00
Second Nat. Bank
Jas. Williams, Cas.

John White, of the firm of White & Bell, gave this check to the Second Nat. Bank in payment of a draft drawn on him through the Second Nat. Bank.

White had authority to sign the firm's checks, but this authority would not let him draw them to pay his own debts, and on discovering the fact that the check had been drawn and paid the partners could make the Second Nat. Bank account for the amount, if White had not, and if he had not consent from his partners to draw the check.

McMASTER'S COMMERCIAL DIGEST,
PAGE 205 A;
12 PET. 221.

NO. 63.

COLLATERAL: CORPORATION.

Instance where corporation was not bound by
tatement of president that certain of its proper
ad been transferred to him,—or by the writte
ssigment of the property by the secretary.

37A, VOL. 1, McMASTER'S REVERSED CASES;
58 NO E. REP. 598.

$10,000.00 Peoria Ills. Jan. 27 1898.

Three months after date I promise to pay
to the order of Home Bank
Ten Thousand Dollars
at Home Bank [Warehouse Receipts 220 bbls Whiskey as collateral]
Value received

No. Due

P. R. Stringer

P. J. Stringer was General-Manager, Treasurer and director of the Stringer-Wheeler Co., a corporation.

The company had warehouse receipts for 220 bbls. of whiskey at the Home Bank as collateral for a loan, which had just been paid. Stringer owed the bank, individually, $10,000 and the bank wanted more collateral. Stringer said that his corporation was largely indebted to him, and that he would buy the whiskey of his corporation and leave it at the bank as collateral for this new note.

The certificates were in the name of the company, and the bank sent them over to the Stringer-Wheeler Co. asking that they be assignsd to the bank, and the secretary assigned them,--the bank saying at the time that they held the certificates as collateral to note of P. J. Stringer. Stringer did not account to his corporation for the whiskey, and the creditors of the corporation forced the bank to return it.

37A. McMASTER'S REVERSED CASES.
111 U. S. 184, 181 ILL. 35, 70 CAL. 289, 152 U. S. 340, 25 N. Y. 293, 41 MICH. 199, 140 N. Y. 612.
NO. 14.

"The general rule is that one who receives from an officer of a corporation the notes or securities of such corporation in payment of or as security for a personal debt of such officer, does so at his own peril. *Prima facie* the act is unlawful."

120 N Y. 145

No. 64.

NOTE PAYABLE TO A TRUSTEE
NON-NEGOTIABLE.

$1100. Baltimore May 4 1900

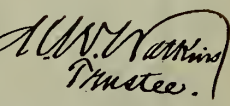
Two months after date We promise to pay to the order of M W Watkins Trustee Eleven Hundred Dollars at Second National Bank

Value received

No. Due

Flummer & Erich

McMASTER'S COMMERCIAL DIGEST
PAGE 226 A;
51 MD. 136.



A bank bought this note of M. W. Watkins indorsed as above giving him full value therefor, but they had to surrender it to the estate of which Watkins was trustee,—he having misappropriated the money."

McMASTER'S COMMERCIAL DIGEST,
PAGE 226 A;
51 MD. 126

It was said by the court in disposing of the case: "In the case of the present note, it cannot be read understandingly without seeing upon its face that it is connected with a trust and is part of a trust fund. It was the duty of the bank, before purchasing it, to have made inquiry into the rights of the trustee to dispose of it. But this it wholly failed to do, and as it turned out, he was disposing of the note in fraud of his trust, the bank must suffer the consequences of the risk it assumed."

SEE NO. 65.

No. 65.

COLLATERAL:
STOCKS PAYABLE TO TRUSTEE:
ASSIGNED IN BLANK.

McMASTER'S COMMERCIAL DIGEST,
PAGE 241 A.

$106,300. New York, November 9, 1900.

At sight Pay to

the order of H. R. Day and Company

One hundred six thousand, three hundred ~~~ Dollars

On delivery of $100,000. U. S. Bonds forwarded herewith

Value received and charge the same to account of

To Mellen, Ward and Co

No. Boston, Mass.

Wm Warner & Co

LITHOGRAPHED BY W. B. CO.

Pay Spencer Vilas & Co
or order
A. R. Day & Co

This draft was sent for collection, to Vilas & Co., who gave the bonds to Mellen, Ward & Co. on payment of $50,000 in currency, and their check for $56,300 secured by certain shares of stock in the name of "E. Carter, Trustee," and assigned in blank on the back,—the signature there being "E. Carter, Trustee."

The estate for which Carter was trustee forced a return of the stock from Vilas & Co.

Paper payable to a trustee carries notice with it, and that it represents trust funds, and that the trustee cannot pledge or use it for his own purposes.

McMASTER'S COMMERCIAL DIGEST
PAGE 241 A:
100 MASS. 221.

The following quotations are from the opinion in this case: "And that the mere use of the word 'trustee' in the assignment of a mortgage and note imports the existence of a trust, and gives notice thereof to all into whose hands the instrument comes, has been decided by this court. 14 Allen, 523; 13 Allen, 50, 407.

"The fact that it is common to issue certificates of stock in the name of one as trustee, when no trust actually exists, has no legal bearing on the decision of the present case. The rules of law are presumed to be known to all men; and they must govern themselves accordingly. 'The law holds that the insertion of the word "trustee" after the name of a stockholder does indicate and give notice of a trust. No one is at liberty to disregard such notice and to abstain from inquiry for the reason that a trust is frequently simulated or pretended when it does not really exist.'

"The circumstance that stock certificates issued in the name of a trustee, and by him transferred in blank, are constantly bought and sold in the market without inquiry, is likewise unavailing. A usage to disregard one's duty, to be ignorant of a rule of law, and to act as if it did not exist, can have no standing in the courts."

SEE NO. 64.

No. 66.

GUARANTOR: SURETY.

arantors released, for the reason that note not discounted by party agreed on.

McMASTER'S COMMERCIAL DIGEST
PAGE 93A;
28 S. E. REP. 50

$4000-

Greenville. S.C. July 1 1898

Four months after date We promise to pay to the order of L.D. Battey. Cashier.

Four Thonsand Dollars

at National Bank of Greenville

Value received

Olmand & Grayforth
W.P. Armstrong
R.J. Dunlap
P.P. Williams

No. Due

CRANE'S BOND John Polhemus Printing Company 121 Fulton St. N.Y.

287

Without Recourse
L. D. Battey
Cashier

Dunlap, Williams and Armstrong signed this note as sureties for Olmand & Grayforth.

When the note was executed it was agreed that it was to be discounted by Battey, cashier, but he declined to take it, and indorsing it as above it was discounted by a party who had knowledge of the above facts.

This released the sureties.

McMASTER'S COMMERCIAL DIGEST
PAGE 03 A;
28 S. E. (EP. Co

No. 67.

INDORSEMENT: CORPORATION: POWER OF OFFICER TO INDORSE HELD NOT TO BE POWER TO RECEIVE PROCEEDS OF PAPER.

McMASTER'S COMMERCIAL DIGEST, PAGE 183A; ERRORS AND APPEALS, N. J. NOV. 17, 1897.

Second National Bank
Harrison Ohio. Aug. 10. 1905

$370.

Pay to the order of American Saw Co.

Three Hundred & Seventy Dollars

Value received and charge the same to account of

To Third National Bank
No.
New York

N. D. Rowe
Cashier

American Saw Co
By J. F. Bissell
Secy.

J. F. Bissell was the secretary of the above company, and for many years he indorsed all of the checks of the company received through the mail and deposited them in a bank where the company's account was kept. The checks on this account were all signed by the treasurer,--not by the secretary.

Bissell from time to time during several years indorsed many checks as above and asked the bank for the currency on them, which he received, embezzling the money. The bank had to make the amounts good.

Authority to indorse for deposit is not authority to indorse and receive money.

McMASTER'S COMMERCIAL DIGEST, PAGE 183A.

NO. 68.

AYMENT: CHECK; INDORSEMENT.

bank that receives check indorsed to the bank
ot safely pay proceeds to bearer of check,
hout specific written order of indorser.

McMASTER'S COMMERCIAL DIGEST
PAGE 78 A,
AT CONN. 421

No. 3856 New York, July 15 1900

Ninth Ward Bank

Pay to the order of Theo. Myers

Ten Hundred & Thirty Nine x 77/100 Dollars.

$1039 77/100

D. W. Hopper

Pay to the order of
Bristol Co.
Theo Myers

Pay to the order of
First Nat'l Bk.
Hartford.
Bristol Co.
W Ray. Treas

After indorsing this check as above, Ray made out a deposit slip, entering this check for credit and sent check and deposit slip to his bank by messenger.

The messenger tore up the deposit slip and told the cashier of the bank that Ray wanted currency for it to pay off the hands.

The messenger stole the money. The bank had to make it good.

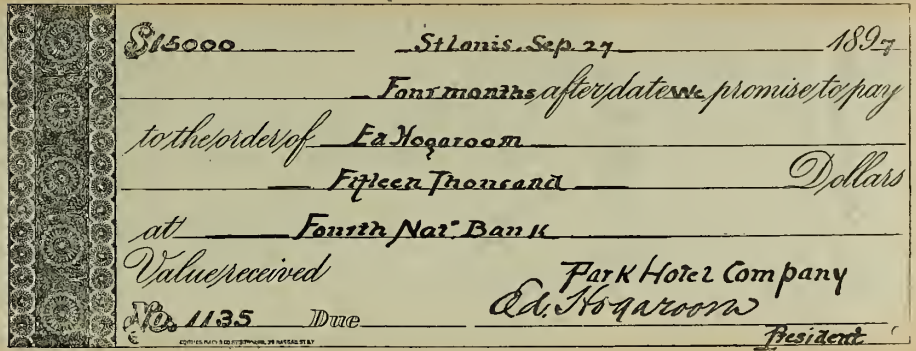
McMASTER'S COMMERCIAL DIGEST,
PAGE 76 A;
41 CONN. 421

No. 69.

**CORPORATION NOTE:
NON-NEGOTIABLE INSTRUMENT.**

This note is made by a corporation at the hands of its president and is payable to himself individually, and is therefore non-negotiable.

McMASTER'S COMMERCIAL DIGEST, PAGE 157 A; ALSO PAGES 440 A; 462 A; U. S. CIR. CT. OF APPEALS, 8TH CIR. 1898



$15000 St Louis. Sep. 27 1897

Four months, after date we promise to pay

to the order of Ed Hogaroom

Fifteen Thousand Dollars

at Fourth Nat'l Bank

Value received

No. 1135 Due

Park Hotel Company

Ed. Hogaroom President

Ed. Hogaroons

This note is made by a corporation at the hands of its president and is payable to himself individually, and is, therefore, non-negotiable.

The court said that it carried on its face a danger signal which no prudent man would disregard. The bank that discounted the note could not hold the Hotel Company although they took the note in good faith, before maturity giving full value therefor.

McMASTER'S COMMERCIAL DIGEST, PAGE 157 A; ALSO PAGES 440 A; 482 A; U. S. CIR. CT. OF APPEALS 8TH CIR. 1899.

"General authority to conduct the business and to issue the promissory notes of a corporation is authority to do those acts for corporate purposes, and in the interest of the corporation, only. It does not include the power to do them for the exclusive benefit of others, to the detriment of the corporation. And while a promissory note, made by an agent or officer having such authority, in the usual form, and taken by a stranger in the ordinary course of business, carries with it the presumption that it was issued for corporate purposes, and under lawful authority, a note issued by such an agent payable to himself, is accompanied by no such presumption, but is itself notice that it is without the scope of his general power, and that it does not bind his principal, unless its execution was specially authorized by the corporation through its directors or officers, other than the agent to whom it is payable. Such a note is a danger signal, which the discounter or purchaser disregards at his peril. It is notice to him that, if it is contested, he cannot recover upon it, under any general authority in the agent, or at all, unless he proves that the agent was specially authorized to make that particular transaction, or to make contracts of the corporation with himself."

58 FED. 742; 95 U. S. 557; 78 CAL. 289; 152 U. S 346. 25 N. Y. 283; 41 MICH. 169.

No. 70.

CHECK OF PRINCIPAL DRAWN BY AGENT IN PAYMENT OF AGENT'S DEBTS.

166A, VOL. 2, McMASTER'S REVERSED CASES.

Middlesex County Bank.

No. 40352 Perth Amboy N.J. Mch. 13. 1899.

Pay to the order of — John R Miller, Attorney —

— Seventy Five Hundred — Dollars

To The National Park Bank. New York.

$7500

George N. Valentine

Cashier.

George M. Valentine was cashier of the Middlesex County Bank, and was also a partner in a certain firm. The Manufacturers' National Bank held a note for $7,500 made by Valentine's firm and indorsed individually by Valentine.

The note was not paid, and judgment was entered against Valentine, and on being pressed for the amount by the attorney for the Manufacturers' Bank, Valentine drew the draft at his own bank on the National Park Bank for $7,500, to the order of "John A. Miller, Attorney," signed by himself as cashier, and delivered it to Miller who indorsed it to the Manufacturers' Bank to whom it was paid.

Valentine had no funds in the bank when he drew this draft to pay his own debt. He was subsequently proved to be a defaulter to his bank in a large amount.

The receiver of the Middlesex County Bank sued the Manufacturer's National Bank for the $7,500, and recovered the amount.

The court said in part: "The draft thus delivered to Miller was not, and did not pretend to be, anything other than the draft of the Middlesex County Bank, made by its cashier in his official capacity, against the funds of the Middlesex County Bank deposited in the National Park Bank of New York, and was intended by Valentine, and known by Miller, to be issued for the payment of the debt of George M. Valentine as an individual. With all of these facts the plaintiff in error, by its officers and its attorney, was familiar.

"There is no reason which is founded on principle that can be given for not applying the same rule of agency to a cashier as to other persons occupying fiduciary relations. No person can act as an agent in a transaction in which he has an interest, or to which he is a party, on the side opposite to his principal. This must be so where the person dealing with the agent has knowledge of the facts. A person cannot deal with a cashier of a bank as an individual, in securing a draft and claim, after the draft is delivered, it has become the transaction of the bank. To make the acts of the cashier valid, the transaction in which the draft is delivered must be a bank transaction, made by the cashier, within his express or implied authority, in the conduct of the business of the bank. So long as a person deals with the cashier in a matter wherein, as between himself and the cashier, he is dealing with, or has a right to believe he is dealing with, the bank, the transaction is obligatory upon the bank. The cashier is presumed to have all the authority he exercises in dealing with executive functions legally within the powers of the bank itself, or which are usually or customarily done, or held out to be done, by such an officer. But the test of the transaction is whether it is with the bank and its business, or with the cashier personally and in his business." Claflin v. Bank, 25 N. Y. 293; Moores v. Bank, 111 U. S. 164, 4 Sup. Ct. 345, 28 L. Ed. 385.

Sec. 57. **Rights of Holder in Due Course.** A holder in due course holds the instrument free from any defect of title of prior parties, and free from defense available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

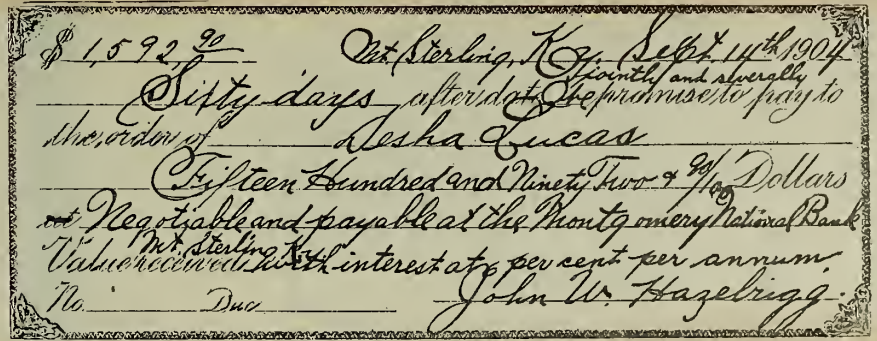
For changes in text, see **Illinois** Rev. Stats. 1909, sec. 57; **Wisconsin** Laws 1906, ch. 78, sec. 1886.

NO. 71.

AMBLING DEBTS: ILLEGALITY: DEFENSES.

lander & Co. could not enforce this note, upon uthority conferred by this section, where a declares all gaming contracts void.

CMASTER'S COMMERCIAL CASES, 1907, PAGE 103A, 97 S. W. 353.



$ 1,592.90 Mt Sterling, Ky. Sept. 14th 1904

Sixty days after date the promise to pay to the order of Desha Lucas

Fifteen Hundred and Ninety Two 90/100 Dollars at Negotiable and payable at the Montgomery National Bank Mt Sterling, Ky. Value received, with interest at 6 per cent. per annum.

No. Due John W. Hazelrigg.

Desha Lucas

The plaintiff in a suit to recover the face of this note, instituted in the courts of Kentucky, claimed to be a holder in due course. The defense alleged that the note was given in payment of a bet on a horse race. By the laws of Kentucky contracts entered into in settlement of gaming debts, bets, wagers, etc., are void, and a note given in payment of a bet, even when held by an innocent party, cannot be collected. A Negotiable Instruments Law has been enacted in that State and it was claimed in behalf of the holder in this case that the gaming law or law in restriction of the same in Kentucky had been so far superseded or repealed by the new law as to make that defense no longer available as against the holder of negotiable paper in due course. The Kentucky Court of Appeals upon this subject says: "It has been the policy of this State to suppress gaming and the statutes making gambling contracts void are founded upon what the legislature has for many years deemed to be sound public policy. It is inconceivable that the General Assembly, in the passage of the Act of 1904, for the protection of innocent holders of negotiable instruments, intended to, or did, repeal section 1955 Ky. St. 1903." The note was declared void and the judgment in favor of defendant by the lower court affirmed.

McMASTER'S COMMERCIAL CASES.
97 S. W. 253.

No. 72.

GUARANTY: ASSIGNMENT

Guaranty on negotiable note,—not assignable transfer of the note—in some localities.

McMASTER'S COMMERCIAL DIGEST. PAGE 109 A.

$1599 34/100 Boston, Mass. May 2 1897

Four months after date I promise to pay

to the order of B. N. Young

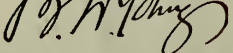
Fifteen Hundred Ninety Nine 34/100 Dollars

at Second Nat. Bank.

Value received W. E. Ryder

No. Due

LEWIS, MUNSELL & CO. BOSTON, MASS.



I guarantee the payment of the within note

Wm Filkins

Filkins the owner of this note wrote the above guaranty on it and sold it to one Smith, who transferred it to one Edwards without indorsement. It was held that Edwards could not enforce the Filkins guaranty, the court holding that, as drawn, the guarantee was personal to Smith.

It is dangerous to rely on guaranties that come by assignment, unless by their terms they are written for the benefit of subsequent assignees.

McMASTER'S COMMERCIAL DIGEST.
PAGE 106A.

Sec. 58. **When Subject to Original Defenses.** In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

Sec. 59. **Who is Deemed a Holder in Due Course.** Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last mentioned rule does not apply in favor of a party who becomes bound on the instrument prior to the acquisition of such title.

ARTICLE V.

LIABILITIES OF PARTIES.

Sec. 60. **Liability of Maker.** The maker of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse.

Sec. 61. **Liability of Drawer.** The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted and paid, or both, according to the tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negotiating or limiting his own liability to the holder.

Sec. 62. **Liability of Acceptor.** The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance, and admits:

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

2. The existence of the payee and his then capacity to indorse.

No. 73.

DRAFTS:

LIABILITY OF ACCEPTOR.

Where commission men wired a bank that they ld honor draft for cost of cattle consigned to it was held, their agreement to accept the n before it was drawn made their liability the that it would have been had they accepted it presentation. 133 Ill. 234.

133 ILL. 234,
McMASTER'S COMMERCIAL CASES,
1909, PAGE 11A,
84 N. E. 910.

$3300 7/100 Blandinsville, Ill., July 21 1904.

At Sight Pay to the

Order of John Huston & Co

Three thousand three hundred & 00/100 Dollars

Value received, and charge the same to account of

To Louis M. Irwin & Co Trindell & Sainty

No. Chicago Ill.

John Huston & Co.

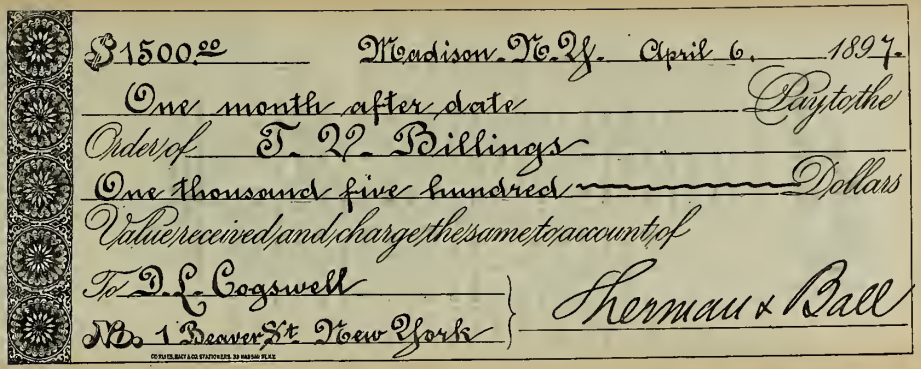
John Huston & Co. were bankers at Blandinsville, at Illinois, and the drawees of this draft, Louis M. Newgass & Co., were engaged in selling horses on commission at Chicago. Grindell & Dainty, the makers, were originally partners, engaged in business in buying horses in the vicinity of Blandinsville and shipping them to Chicago for sale. Grindell being located in Blandinsville and Dainty in Chicago. An account was opened in the firm name by Grindell & Dainty with Huston & Co., and when Grindell would leave for the country to buy horses he would sign a draft leaving the amount and date blank, and when he had bought a car load of horses, he would telephone the plaintiffs, Huston & Co., the amount and the date. The drafts were then filled in by them, and sent to Chicago for payment and the amount was credited to the account of Grindell & Dainty, and Grindell & Dainty checked out the proceeds of the draft to persons from whom they had purchased the horses. All such drafts drawn prior to July 1st, 1904, were paid by Newgass & Co. On July 20th, 1904, a car load of horses were shipped and this draft was drawn on July 21st, 1904, and Newgass & Co. refused to honor the draft and were sued by Huston & Co. A judgment for the defendants was rendered in the trial court, and this was affirmed by the Appellate Court, but the judgment was reversed by the Supreme Court of Illinois. The defendants had written the plaintiffs that they would honor drafts drawn by Grindell & Dainty for horses. The defendants sought to escape liability by showing that the firm of Grindell & Dainty had been dissolved prior to the execution of this draft;; therefore, that the draft was not the draft of Grindell & Dainty. But the Supreme Court of Illinois held that unless the plaintiff Huston & Co. had actual notice of the dissolution of this partnership, the draft would be considered the draft of Grindell & Dainty. It was also held that the acceptor of a bill of exchange becomes primarily liable for its payment and is to be considered the principal debtor; and this is true even if the acceptance is for the accommodation of the drawer, the acceptor having no funds of the drawer in his hands to pay it.

No. 74.

FORGED INDORSEMENT

Owner of draft, on receiving payment thereof
om the acceptor, held not bound to furnish gen-
ne indorsement of payee, if lack of such genuine
ndorsement could work no advantage to the
ceptor or payor.

McMASTER'S COMMERCIAL DIGEST,
PAGE 405 4.


$1500.00 Madison. N.Y. April 6. 1894.
One month after date Pay to the
Order of T. W. Billings
One thousand five hundred Dollars
Value received and charge the same to account of
To D. L. Cogswell
No. 1 Beaver St. New York
Sherman & Ball

Cogswell accepted and paid this draft as an accommodation to the drawers--who failed and did not reimburse him. He then discovered that one of the firm had forged the indorsement of the payee--who had no interest in the draft and had no knowledge of it,--Cogswell then sued the collecting bank for the return of the money--as warrantor of all previous indorsements. He failed in his action--as the procuring of the genuine indorsement would have been of no benefit to him--as the payee of a note or draft could have no action against an indorser.

A payee of an instrument cannot always demand genuine signatures on his paper--if such signatures could not benefit him.

McMASTER'S COMMERCIAL DIGEST,
PAGE 405 A;
1 N. Y. 213.

No. 75.

CERTIFIED CHECK: RAISED CHECK.

...k that certifies raised check is only liable for ...original amount of check before it was raised.

McMASTER'S COMMERCIAL DIGEST.
PAGE 143 A;
69 N. Y. 47.

No. 729

Certified Jan 4. 00
J. W. Harrison Cash

New York, Jan. 3 1900

Northern National Bank

Pay to the order of Wm Warren

Five Hundred 100 Dollars

$500 ⁴⁴

J. W. Harrison

CRANE BOND

311

Jno Warren
Hall & Co

A bank in certifying a cheque does not warrant that the amount has not been raised.

If this cheque had been raised from $5.00 to $500 before certification the bank would be held but for $5.00, in spite of the fact that H. & Co. had paid $500 for it to Warren on strength of certification.

And if the bank had paid $500 after certification, they could force Hall & Co. to refund $495. the amount raised.

McMASTER'S COMMERCIAL DIGEST
PAGE 143A
59 N. Y. 67.

"The fact that the bank on which it was drawn has certified the check after the change has been made is not conclusive against such bank, nor does it preclude it from showing the fact of such alteration, nor prevent a recovery from the party who received the check on the faith and credit of the certification alone."

182 A. SEE 367 A.

Sec. 63. **When Person Deemed Indorser.** A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. Cf. sec. 17.

No. 76.

CERTIFICATE OF DEPOSIT: INDORSER.

ding not in accord with statute.

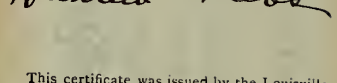
McMASTER'S COMMERCIAL CASES, 1910, PAGE 51A, 121 S. W. 426.

LOUISVILLE DEPOSIT BANK.

Louisville, Ky., January 28, 1903

THIS IS TO CERTIFY that Andrew Krebs has deposited in this bank $1,473.32 payable to his order six months after date on the return on the certificate with interest at the rate of four per cent per annum, interest then to cease.

J. B. Ohlgschlager
Cashier.



This certificate was issued by the Louisville Deposit Bank to Andrew Krebs. Krebs delivered the same to Blatz and signed thereon his name as above. *Held*, that the instrument in effect was a promissory note and that Krebs was liable thereon as assignor.

—See Decision No. 1223.

An instrument as published here is essentially a promissory note. In the case, however, the court finds that when the payee delivered it to a third party and signed his name on the back his liability was that of an "assignor." Since the Neg. Insts. Law was the law in Kentucky, at the time, the liability should clearly have been held to be that of "indorser."

121 S. W. 426.

Sec. 64. **Liability of Irregular Indorser.** Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties;

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer;

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

For text change, see Rev. Stats. 1909, sec. 64.

No. 77.

DRAFTS: IRREGULAR

INDORSER: LIABILITY.

Neg. Insts. Law, Secs. 63, 68, 29.

McMASTER'S COMMERCIAL CASES, 1909, PAGE 191A, 85 N. E. 682.

$1327.41

COAL OFFICE OF HADDOCK, BLANCHARD, & CO., INCORPORATED.

New York, April 28, 1902.

Four months after date pay to the order of ourselves

Thirteen hundred twenty-seven and 41/100 ----------Dollars

Value received and charge the same to the account of

To Montauk Coal Co.

Brooklyn, N.Y.

Haddock, Blanchard & Co. Incorporated

C. N. Blanchard, Asst. Treas.

Pay to the order of Binghamton Trust Co. Binghamton, N.Y.

The Binghamton Trust Co.

The Broadway Bank, Brooklyn

319

Haddock, Blanchard & Co.
Incorporated.
C. N. Blanchard,
Assistant Treasurer
John C. Haddock

John C. Haddock, the above indorser, was the president of Haddock, Blanchard & Company, at the time this draft was drawn. The draft was drawn upon the Montauk Coal Company, which had purchased coal of Haddock, Blanchard & Company. John C. Haddock owned practically all the stock of the Montauk Coal Company at this time, and the evidence adduced at the trial showed that he had agreed to guarantee the credit of the Montauk Coal Company, if Haddock, Blanchard & Company would sell coal to it. This was one of the drafts, drawn upon the Montauk Coal Company, which the Montauk Coal Company accepted and which John C. Haddock indorsed. The draft is drawn by Haddock, Blanchard & Company payable to themselves and indorsed by them. It was discounted at the Binghamton Trust Company, and it was presented for payment upon its maturity, and not being paid, it was duly protested. Haddock, Blanchard & Company sought to recover from John C. Haddock upon his indorsement. He contended that he did not indorse the draft for the accommodation of the maker, but the weight of evidence showed that he did. Of course, the Negotiable Instruments Law provides that an irregular indorser is liable to all parties subsequent to the maker or drawer, if the instrument is payable to the order of the maker or drawer, or is payable to bearer; and the Negotiable Instruments Law further provides that indorsers are liable prima facie in the order in which they indorse, but evidence is admissible to show that as between or among themselves they have agreed otherwise. The court in this action held that the drawee by accepting the draft became the party primarily liable, and the draft after its acceptance was virtually a promissory note payable to the order of the payee and made by the acceptor. Of course, on the back of this instrument there are the two indorsers, Haddock, Blanchard & Company and John C. Haddock, and the Negotiable Instruments Law provides that among themselves evidence may be introduced to show what their respective liability is. The evidence in this case showed that John C. Haddock was liable on this note to Haddock, Blanchard & Company: that he had indorsed it for the accommodation of the drawee and acceptor, and that credit was extended to the drawee by the drawer on the strength of his indorsement.

Sec. 65. **Warranty; Where Negotiation by Delivery, et Cetera.** Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be;

2. That he has good title to it;

3. That all prior parties had capacity to contract;

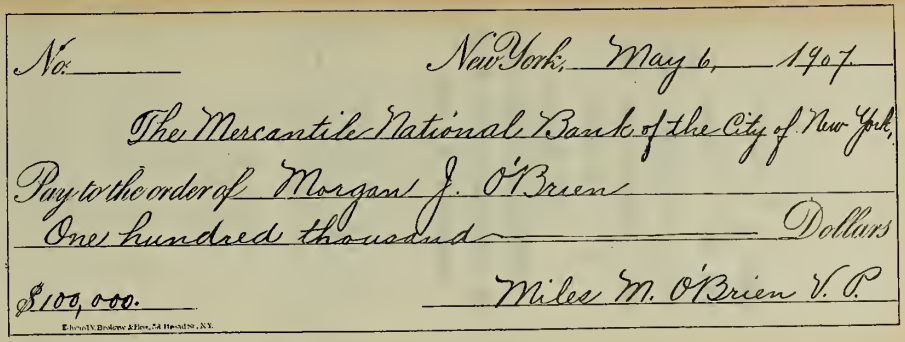
4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

No. 78.

UNAUTHORIZED INDORSEMENTS:
GUARANTY: LIABILITY.

McMASTER'S COMMERCIAL CASES,
1910, PAGE 37A,
170 FED. 920.



No. _____ New York, May 6, 1907

The Mercantile National Bank of the City of New York,

Pay to the order of Morgan J. O'Brien

One hundred thousand _____ Dollars

$100,000. Miles M. O'Brien V. P.

Ebert & Brokaw & Hier, 54 Beekman St., N.Y.

Morgan J. O'Brien
by C. W. Morse

PAY TO THE NATIONAL BANK OF NORTH AMERICA IN NEW YORK, N. Y. OR ORDER .

C. W. Morse

INDORSEMENTS GUARANTEED THE NATIONAL BANK OF NORTH AMERICA IN NEW YORK

The above indorsement "Morgan J. O'Brien by C. W. Morse." was unauthorized. The National Bank of North America was therefore liable on its guarantee of previous indorsements.

See Decision No. 1209.

170 FED. 920.

Sec. 66. **Liability of General Indorser.** Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

1. The matter and things mentioned in subdivisions one, two and three of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or any subsequent indorser who may be compelled to pay it.

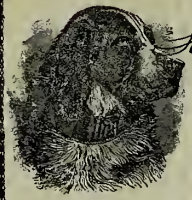
For text changes, see Illinois Rev. Stats. 1909, sec. 66; South Dakota Laws 1913, ch. 279, sec. 66.

No. 79.

NATURE OF CONTRACT OF INDORSER.

The obligation of an indorser is a new and independent contract separate and distinct from the contract evidenced by the note.

McMASTER'S COMMERCIAL CASES, 1909, PAGE 19A, 110 N. Y. SUPP. 972.



$500.00 NEW YORK, Dec. 28th 1906

Six months and five days AFTER DATE I PROMISE TO PAY TO THE ORDER OF myself

Five Hundred and no/100 DOLLARS

AT 16½ Carmine St.

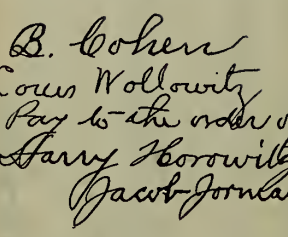
VALUE RECEIVED

B. Cohen

NO. DUE

EDWARD V. BROKAW & BRO., 34 BROAD ST., N.Y.

327



Harry Horowitz, above named, who is the holder of this note, sued his prior indorsers, Cohen, Wollowitz and Jormack. Wollowitz was an accommodation indorser. B. Cohen, who was also an indorser, made and executed the note, and delivered the same to Jormack, who transferred it before maturity to the plaintiff. There was usury in the inception of the note and the defendants' attorney made a motion to dismiss the complaint on the ground that the note was void in its inception on account of the taint of usury. The lawe of New York make a usurious contract void as to principal and interest. The trial court rendered judgment in favor of the defendant on this ground and the plaintiff appealed. The Appellate Court reversed the judgment of the trial court and stated in its opinion that section 116 of the Negotiable Instruments Law made the indorsers of a promissory note liable even though there was usury in the inception of the note, because an indorser of a promissory note warrants that at the time of his indorsement the note is valid and subsisting. Section 116 of the Negotiable Instruments Law reads as follows: "That every indorser who indorses without qualification warrants to all subsequent holders in the due course: . . . (2) That the instrument is at the time of his indorsement valid and subsisting." There would be some question as to whether or not the maker of the note would be liable under the circumstances set forth above, but under this decision there seems to be no question about the liability of the indorser.

Sec. 67. **Liability of Indorser Where Paper Negotiable by Delivery.** When a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. Cf. secs. 8, 9 and 30.

For text changes, see Illinois Rev. Stats. 1909, sec. 68.

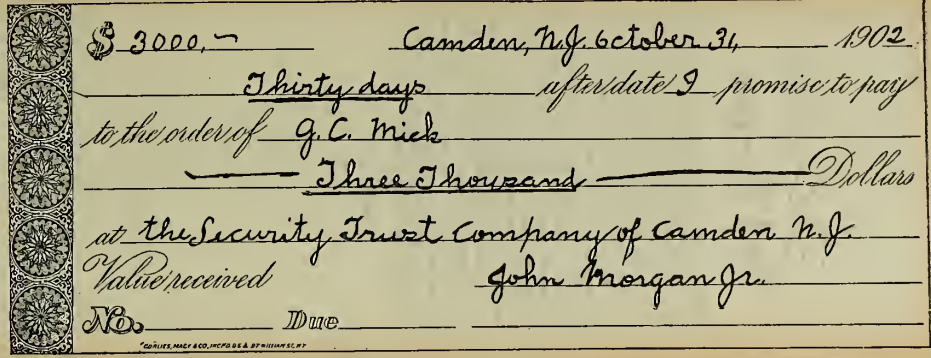
Sec. 68. **Order in which Indorsers Are Liable.** As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

Illinois Rev. Stats. 1909, sec. 69a.

No. 80.

EVIDENCE ADMISSIBLE AS BETWEEN IMMEDIATE PARTIES TO SHOW TRUE RELATIONSHIP.

McMASTER'S COMMERCIAL CASES, 1906, PAGE 163A. 62 ATL. 410.



$ 3000.— Camden, N.J. October 31, 1902

Thirty days after date I promise to pay

to the order of G.C. Mick

Three Thousand Dollars

at the Security Trust Company of Camden N.J.

Value received John Morgan Jr.

No. Due

FORMES, MACY & CO., INC. PO. BOX & 87 WILLIAM ST. N.Y.

G. C. Mick
Wm J. Thompson.

This note was without consideration as between the parties. It was subsequently indorsed, however, by the payee, G. C. Mick, and William J. Thompson and was discounted by the Security Trust Company of Camden, N. J. On the trial the plaintiff testified that the note was made by him, at the request of Mick and Thompson, to raise money for their use, and that at the time the plaintiff gave the note they had promised him that they would pay it and he would hear no more about it. A nonsuit was granted by the trial court on the ground that plaintiff sought to establish by parol a contract different from that shown by the written instrument. The Court of Errors and Appeals of New Jersey reversed this judgment upon the ground, among others, that "As between the original parties, the consideration of a note may always be inquired into, and parol evidence is admissible for that purpose." The plaintiff had been sued on the note by the Security Trust Company and compelled to pay judgment, interest and costs. He then sued these defendants for the money paid.

Sec. 69. **Liability of Agent or Broker.** Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 65 of this Act, unless he discloses the name of his principal, and the fact that he is acting only as agent. Cf. sec. 20.

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

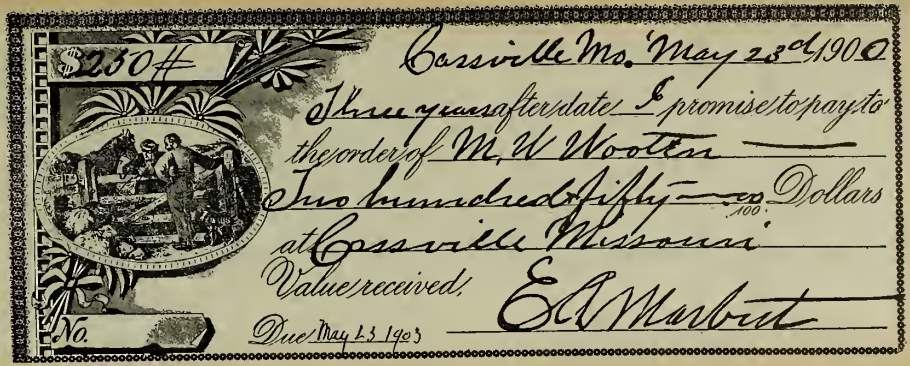
Sec. 70. Effect of Want of Demand on Principal Debtor. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is willing and able to pay it there at maturity and has funds there available for that purpose, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. Payable at a Bank, sec. 87.

See Illinois Rev. Stats. 1909, sec. 70; Kansas Laws 1909, ch. 84, sec. 70; New York Consol. Laws, ch. 38; Ohio Civil Code, 1910, sec. 1806; Wisconsin Laws 1906, ch. 78, sec. 1678.

No. 81.

SUFFICIENCY OF PRESENTMENT.

McMASTER'S COMMERCIAL CASES,
1908, PAGE 30A.
101 S. W. 617.


$250 #
Cassville Mo. May 28th 1900
Three years after date I promise to pay to
the order of M. W. Wooten
Two hundred & fifty —— 00/100 Dollars
at Cassville Missouri
Value received,
E. A. Marbut
No.
Due May 28 1903

Pay to the order of
Joseph C. Harris
Without recourse
M. W. Wootten
Pay to the order of
John M. Bayless
Joseph C Harris

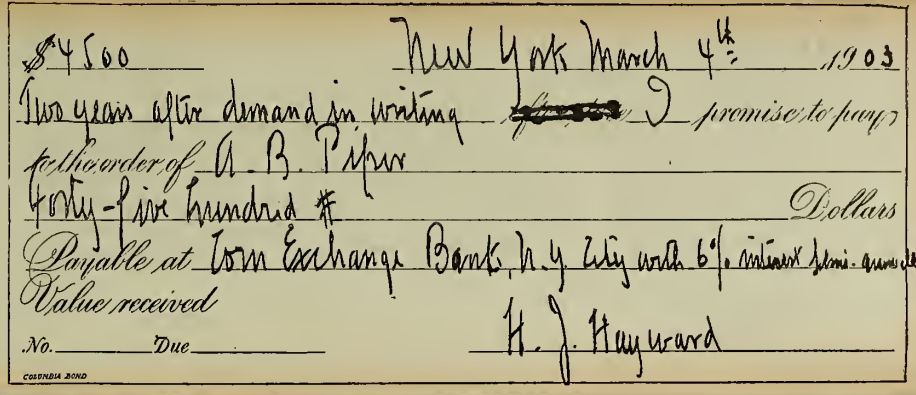
The indorsee and holder, John M. Bayless, sued the maker, E. A. Marbut, and the above indorser, Joseph C. Harris. The note was not actually presented to Marbut for payment at his residence or elsewhere, but was placed by Bayless in the Barry County Bank, an institution in Cassville, Missouri, and a letter was written to Marbut, some time before the maturity of the note, stating that it would be in the bank on the day it matured to be paid. The bank was not named in the note, as the place where it was payable. The due date of the note, counting days of grace, would be May 26, 1903. It was protested for nonpayment on May 27. The certificate of the notary public read that he presented the note for payment on the day of the protest, which would make the date of presentment one day late, to hold the indorser. As a matter of fact, there was no presentment at all, and therefore the indorser was discharged.

101 S. W. 617.

NO. 82.

DEMAND FOR PAYMENT:
PLACE OF PAYMENT.

McMASTER'S COMMERCIAL CASES,
1911, PAGE 128A.
127 N. Y. SUPP. 240.


$4500 New York March 4th 1903
Two years after demand in writing I promise to pay
to the order of A. B. Piper
Forty-five hundred # Dollars
Payable at Com Exchange Bank, N. Y. City with 6% interest semi-annually
Value received
No. Due H. J. Hayward
COLUMBIA BOND

In the case of Piper v. Hayward, Decision No. 1374, it was held that while this note payable at the Corn Exchange Bank, the demand for payment, which by the terms of the instrument fixed the time of payment, should be made of the maker or her representative personally and not at the bank.

(See Decision No. 1374.)

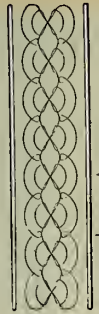
Sec. 71. Presentment Where Instrument is not Payable on Demand. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

No. 83.

**CHECK:
PRESENTMENT.**

...ity of holder of check, as to time of presenta-
...n for payment.

McMASTER'S COMMERCIAL DIGEST
PAGE 362 A.



No 727 Cincinnati O. Oct 1 1900

Second National Bank

Pay to the order of L F Clark

Two Thousand Dollars.

$2000 ⁄⁄ B. E. Wash

L. F. Clark

If the maker and the payee of this check live in the place where the bank on which it is drawn is located, the payee is not bound to present it for payment until the next business day after it is issued to him. But if Clark should send it to a bank or agent for collection, the agent must present it the day they receive it.

McMASTER'S COMMERCIAL DIGEST,
PAGE 362 A;
122 ALA. 580.

"We consider it thoroughly settled that the reasonable time allowed the holder for presenting a check, when he receives it in the same place where the bank on which it is drawn is located, is till the close of banking hours on the next secular day; and if, in the meantime, the bank fails, the loss will fall on the drawer. 6 Wend. 443; 87 Mo. 358; 42 Ill. 238; 44 Cal. 139; 171 Pa. St. 68, 33 Atl. 190; 79 Md. 312; 29 Atl. 527; 62 Mich. 199, 28 N. W. 864; 43 N. Y. 171."

* * * * * *

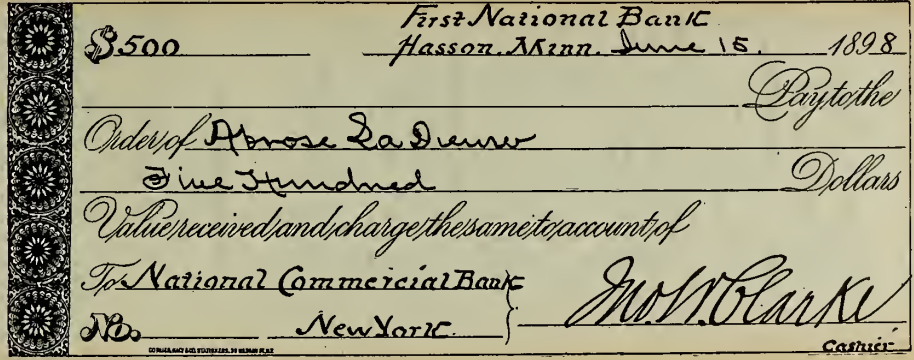
"But when a check is taken, instead of money, by one acting for others, a delay of presentment for a day, or for any time beyond that within which, with proper and reasonable diligence, it can be presented, is at the peril of the party retaining the check and postponing presentment, as between him and the persons in interest whom he represents. And where loss occurs because such a check is not presented on the day of its reception, the agent is liable." The same doctrine is thus stated by Mr. Daniel: "The allowance of a day to present the check does not extend to an agent who receives one for a debt of his principal. He must present it instanter." (2 Daniel, Neg. Inst. § 1590.) The authority cited by each of these text writers is Smith v. Miller (43 N. Y. 171)."

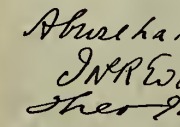
No. 84.

BONA-FIDE HOLDER: OFFSET: STALE DEMAND PAPER

Banker's draft which is not presented in reasonable time, held to be past due paper and subject to offsets of the bank against previous holder,—although the draft subsequently passed to innocent purchasers.

McMASTER'S COMMERCIAL DIGEST, PAGE 111 A; 31 MINN. 33.





La Dieuw, the payee of this draft, indorsed it soon after receiving it, and turned it over to James Edison who held it over four months. The bank that issued the draft, hearing that Edison held it, stopped payment on it and sought to offset it against a note that Edison owed them. They succeeded, although Edison subsequently sold the draft to an innocent purchaser. The last purchaser took the draft nearly five months after it was issued, and the court said that it was then overdue paper subject to offsets of the maker. Some States (most of them) would only have allowed offsets against La Dieuw, or the last holder.

McMASTER'S COMMERCIAL DIGEST, PAGE 111 A; 31 MINN. 33.

Sec. 72. **What Constitutes a Sufficient Presentment.** Presentment for payment to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf;

2. At a reasonable hour on a business day;

3. At a proper place as herein defined;

4. To a person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made. A proper place, post.

Sec. 73. **Place of Presentment.** Presentment for payment is made at the proper place:

1. Where the place of payment is specified in the instrument and it is there presented;

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.

4. In any other case if presented to the person to make payment wherever he can be found, or if presented to his last known place of business or residence.

Sec. 74. **Instrument Must Be Exhibited.** The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

Sec. 75. **Presentment Where Instrument Payable at Bank.** Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

For text change, see Nebraska Comp. Stat. 1912, ch. 41, sec. 75.

Sec. 76. **Presentment When Principal Debtor is Dead.** Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found.

Sec. 77. **Presentment to Persons Liable as Partners.** Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

Sec. 78. **Presentment to Joint Debtors.** Where there are several persons not partners primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

Sec. 79. **When Presentment not Required to Charge the Drawer.** Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

Sec. 80. **When Presentment not Required to Charge the Indorser.** Presentment for payment is not required to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

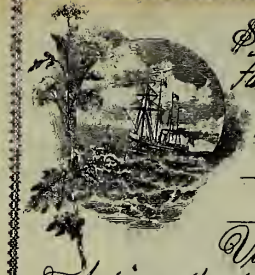
Sec. 81. **Where Delay in Making Presentment is Excused.** Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his fault, misconduct or negligence. When the causes of delay cease to operate, presentment must be made with reasonable diligence.

No. 85.

DELAY EXCUSED.

Tabbert was a traveler, with San Francisco as his
ination. He received the paper while journeying
that point and held it until he arrived there.

McMASTER'S COMMERCIAL CASES,
1908, PAGE 218A.
114 N. W. 481.



$ 400 00/100 Bangor Wisconsin June 10th 1903

Farmers and Merchants Bank on demand Pay to

the order of John Bowen

Four Hundred ~~no/100~~ Dollars

Value received and charge the same to account of

To National Bank of North America

No. Chicago Ill.

George E. Paton

Cashier

ALL LITHOG.

Pay to the order of
A. R. Tabbert,
John Bowen.

Pay to the order of
Columbian Banking
Company.
A. R. Tabbert

Columbian Banking Co.
by Jacob Klinck, Secy.

The Columbian Banking Company sued its prior indorser, John Bowen, and recovered judgment. Bowen appealed, but the judgment was affirmed. The draft is dated June 10, 1903, and is drawn by the Farmers and Merchants' Bank of Bangor, Wis., to the order of John Bowen on the National Bank of North America, Chicago, Ill. The draft was sent to Bowen at Barron, Wis., and he indorsed it and forwarded it to A. R. Tabbert, at Spokane, Washington, on June 16, 1903, who received it June 20. Tabbert was a traveler and was on his way to San Francisco, Cal. He indorsed the draft July 14, 1903, and delivered it at such city to the plaintiff, who became the owner. The plaintiff, the Columbian Banking Company, sent it to a bank in Chicago, which presented it for payment on July 18 and payment was refused and notices of protest were sent by the Chicago bank to the National Bank of North America, at Chicago, and the Farmers and Merchants' Bank on July 19, 1903, and at the same time notices of protest for Tabbert, the Columbian Banking Company and Bowen were sent to the Columbian Banking Company, who forwarded them to the proper parties. The Farmers and Merchants' Bank of Bangor, going into the hands of a receiver, paid dividends upon the draft, but there remained due upon this draft, at the time this action was commenced, $210. The defendant contended that he was released from liability because of the lapse of time between his parting with possession of the draft and the presentation of it to the drawee for payment. The Negotiable Instruments Act provides that a bill of exchange or check must be presented within a reasonable time after its issue for payment, or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. The above rule governs the liability of the drawer. As far as the payee is concerned, "presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof." It was held in this case that the delay was excusable and that the bill of exchange had been presented, under the circumstances, within a reasonable time for payment after the last negotiation, and therefore that the payee, also an indorser, was liable to the subsequent indorser.

Sec. 82. **When Presentment May be Dispensed With.** Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this Act cannot be made;

2. Where the drawee is a fictitious person;

3. By waiver of presentment express or implied. Notice dispensed with, sec. 112.

Sec. 83. **When Instrument Dishonored by Non-Payment.** The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or cannot be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid. Cf. sec. 111.

No. 86.

COLLECTIONS:
PROTEST: PAYMENT.

Payment of draft by worthless check may be rectified, in some cases, by demanding return of cancelled draft and protesting it, whether returned or not.

McMASTER'S COMMERCIAL DIGEST
PAGE 404 A.

$ 3892.37 Erie Pa. April 29, 1900.

At sight Pay to

the order of William R. Barton

Thirty-eight hundred ninety-two and 37/100 Dollars

Value received and charge the same to account of

To C. R. Penn and Company

No. New York.

F. D. Williams

2 TUPY B 3ND

Wm R Paton
F R Ball

It has been held that if when this draft was presented to C. R. Penn & Co., the draft was delivered to them for their check which was not paid, that the collecting bank could demand the return of the draft and protest it. If the return of the draft was refused, its protest, nevertheless, would doubtless be good.

McMASTER'S COMMERCIAL DIGEST, PAGES 404 A, 87 A; 42 N. Y. 536; 52 N. Y. 546.

"We hold that in order to preserve their recourse upon the drawers of the draft the plaintiffs should, when the check was dishonored, have demanded back the draft and again presented it for payment, and, in case of refusal, given notice of such demand and refusal to the drawers, as was done in the case of Turner v. Bank of Fox Lake (3 Keves, 425), and Burkhalter v. Second Nat. Bank of Erie (42 N Y. 538.)"

52 N. Y. 545.

If return of draft was refused it could be protested as in case of a lost or stolen instrument, by making demand with a copy or description of the instrument

Sec. 84. **Liability of Person Secondarily Liable, When Instrument Dishonored.** Subject to the provisions of the Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder.

Sec. 85. **Time of Maturity.** Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

Many of the states adopting the Negotiable Instruments Law have changed the text of this section by introducing exceptions. See Laws.

Sec. 86. **Time; How Computed.** Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

Sec. 87. **Rule Where Instrument Payable at Bank.** Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

In Illinois, Nebraska and South Dakota this section is omitted. A slight change in South Dakota.

No. 87.

PAYABLE AT BANK.

The fact that a note is made payable at a bank gives the bank no implied authority to collect.

McMASTER'S COMMERCIAL CASES,
1906, PAGE 29A,
86 S. W. 1002.

$1435.85 Nashville Ark. Nov 5th 1907

Three Months after date We promise to pay to the order of Howard County Bank

Fourteen Hundred Thirty Five $ 85/100 Dollars

at Howard County Bank, with interest at maturity, at the rate of ten per cent per annum until paid

Value received.

No. Due.

T. S. Hayes & Co.

357

Howard County Bank
John Jones, Cashier

J. J. Hyatt & Co. had credit for this note at the Howard County Bank. Before its maturity this bank rediscounted it at the State National Bank of St. Louis. At the maturity of the note Hyatt & Co. had to their credit in the Howard County Bank more than sufficient funds to pay it, and believing that this bank yet held the note, they wrote the bank to charge it to their account. The bank made such charge by memorandum slip and notified Hyatt & Co. that the note was paid. The note was not returned with the notification, but the makers believed it would be returned at the end of the month with other vouchers.

The Howard County Bank did not pay the note, and the State National Bank did not present it for payment at the Howard County Bank, where it was payable, until some time after it was due. In the meantime, but several days after the maturity of the note, the Howard County Bank had failed and is hopelessly insolvent.

The State National Bank sued Hyatt & Co. on the note, and the appellate court held that the bank should recover. The Howard County Bank had no authority from the State National Bank to receive payment of this negotiable note, and the makers should have known that the holder of negotiable paper is the one to receive payment on it.

Because a note is payable at a certain bank that bank does not become the agent of the holder of the note to receive payment of it. It was on these grounds that the appellate court based its decision.

McMaster's Com. Cases, Vol. 1906, 86 S. W. 1002.

Sec. 88. **What Constitutes Payment in Due Course.** Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

ARTICLE VII.

NOTICE OF DISHONOR.

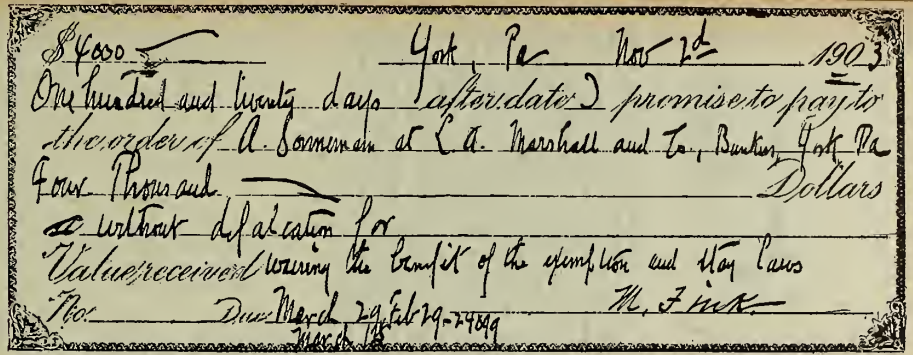
Sec. 89. **To Whom Notice of Dishonor Must be Given.** Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

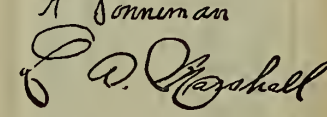
NO. 88.

DISHONOR:

SUFFICIENCY OF NOTICE.

McMASTER'S COMMERCIAL CASES,
1907, PAGE 98A,
64 ATL. 874.


$4000 — York, Pa Nov 2d 1903
One hundred and twenty days (after date) I promise to pay to
the order of A. Sommers at C.A. Marshall and Co., Bankers, York Pa
Four Thousand Dollars
at the bank discretion for
Value received waiving the benefit of the exemption and stay laws
No. Due Nov 2d Feb 29-1904 W. F. Nick
Nov 2



Thie note wae executed and delivered hy M. Fink and A. Sonneman was named as payee. L. A. Marshall brought suit to recover a balance due on it from Sonneman who had indorsed the note. The defendant interposed the defense that he had received no notice of its dishonor. He testified that the notary delivered to him an envelope addressed to L. A. Marshall, the plaintiff, and that the notice of protest itself was addressed to L. A. Marshall. The trial court gave judgment for plaintiff, which was reversed by the Supreme Court of Pennsylvania. This court said: "We are of the opinion that the written notice which the defendant alleges was delivered to him was not sufficient to charge him with the dishonor of the note. . . . But on its face it clearly discloses the fact that it was not intended for the defendant. It was directed to L. A. Marshall. the plaintiff, and the envelope containing it bore the same address."

64 ATL. 874.

Sec. 90. **By Whom Given.** The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

Sec. 91. **Notice Given by Agent.** Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

Sec. 92. **Effect of Notice Given on Behalf of Holder.** Where notice is given by or on behalf of the holder it inures to the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. Read in connection with section, post.

Sec. 93. **Effect Where Notice is Given by Party Entitled Thereto.** When notice is given by or on behalf of a party entitled to give notice, it inures to the benefit of the holder and all parties subsequent to the party to whom notice is given.

Sec. 94. **When Agent May Give Notice.** Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

Sec. 95. **What Notice Sufficient.** A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. Cf. section, post.

Sec. 96. **Form of Notice.** The notice may be in writing or merely

oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

Sec. 97. **To Whom Notice May be Given.** Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Sec. 98. **Notice Where Party is Dead.** When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence, he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Sec. 99. **Notice to Partners.** Where the parties to be notified are partners notice to any one partner is notice to the firm even though there has been a dissolution.

Sec. 100. **Notice to Persons Jointly Liable.** Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

Sec. 101. **Notice to Bankrupt.** Where a party has been adjudged a bankrupt or is insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

Sec. 102. **Time Within Which Notice Must be Given.** Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this Act.

Sec. 103. **Where Parties Reside in the Same Place.** Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

Sec. 104. **Where Parties Reside in Different Places.** Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the post-office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the post-office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post-office within the time specified in the last subdivision.

Sec. 105. **When Sender Deemed to Have Given Due Notice.** Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Sec. 106. **Deposit in Post-Office; What Constitutes.** Notice is deemed to have been deposited in the post-office when deposited in any branch post-office or in any letter box under the control of the post-office department.

Sec. 107. **Notice to Antecedent Party; Time of.** Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

Sec. 108. **Where Notice Must be Sent.** Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the post-office nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or

2. If he live in one place, and have his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this Act, it will be sufficient, though not sent in accordance with the requirements of this section.

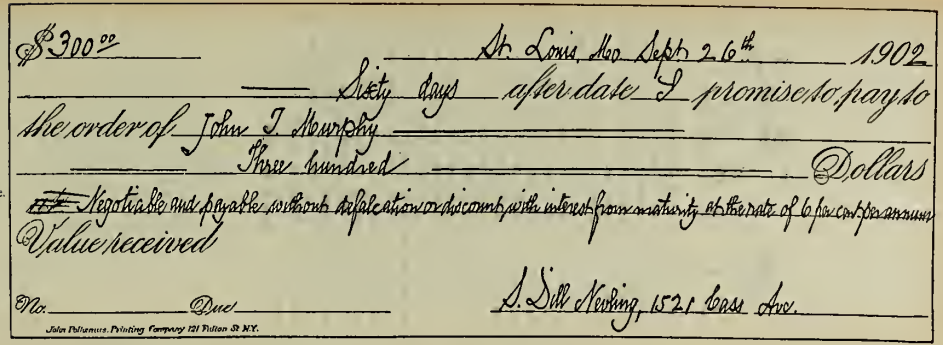
Sec. 109. **Waiver of Notice.** Notice of dishonor may be waived either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

No. 89.

WAIVER OF NOTICE.

Oral waiver after maturity of demand and notice.

McMASTER'S COMMERCIAL CASES,
1907, PAGE 19A,
94 S. W. 303.



$300.00 St. Louis, Mo. Sept 26th 1902

Sixty days after date I promise to pay to

the order of John T. Murphy

Three hundred Dollars

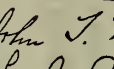
~~Negotiable and payable without~~ deduction or discount, with interest from maturity at the rate of 6 per cent per annum

Value received

No. Due

L. Dill Nesling, 1521 Cass Ave.

John Polkemus Printing Company 121 Fulton St N.Y.



This note was given in part payment for the repurchase of an interest in a business owned by John T. Murphy, the payee named in the note, and C. L. B. Polston, one of the indorsers, and conducted by them in the city of St. Louis, Mo.

One Francis D. Brittain, the husband of the plaintiff, Georgia Brittain, had purchased a one-third interest in said business of Murphy & Polston, paying therefor $500 with the funds of the plaintiff. Mrs. Brittain repudiated the contract and Murphy & Polston repurchased the interest sold to Brittain. The note was not paid at maturity and Mrs. Brittain brought suit against the defendant, John T. Murphy, to recover the amount of it in the St. Louis Circuit Court.

Murphy & Polston indorsed the note and delivered it to Francis D. Brittain, who turned it over to plaintiffs. It was shown on the trial that no demand for payment had been made from the maker of the note, Nevling, and no notice of dishonor given, but the plaintiff produced evidence to prove that the defendant had repeatedly promised the plaintiff, after the maturity of the paper that he would pay the note. This was held to be a waiver of notice by Murphy as an indorser. Judgment in favor of Mrs. Brittain by the trial court was affirmed by the St. Louis Court of Appeals.

94 S. W. 303.

Sec. 110. **Whom Affected by Waiver.** Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

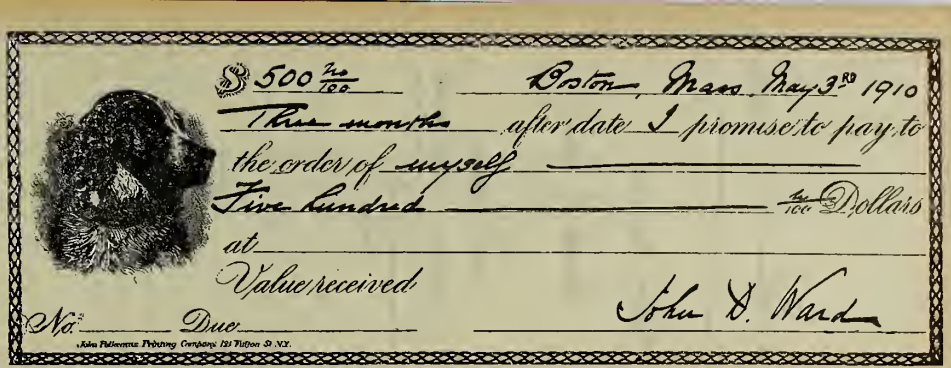
Sec. 111. **Waiver of Protest.** A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentation and notice of dishonor.

No. 90.

PROTEST.

waiver of demand not a waiver of notice as a
ter of law.

McMASTER'S COMMERCIAL CASES,
1913, PAGE 117A.
100 N. E. 554.


$500 2/100
Boston, Mass May 3RD 1910
Three months after date I promise to pay to
the order of myself
Five hundred 2/100 Dollars
at
Value received
John D. Ward
No. Due
John Fallowsmith Printing Company 121 Fulton St. N.Y.

John D Ward

Waive demand

Russell J. Crane.

HALL vs. CRANE.

The waiver of demand was held in this case not to be a waiver of notice of non-payment as well.

See Dec. 1577.

The liability of an indorser is conditional, (1) That at maturity there shall be a demand upon the maker for payment, (2) That if note be not then paid due notice thereof shall be given to the indorser. These two conditions are distinct and independent of each other. Each can be waived and the other insisted upon. Neither upon principle or authority is a waiver of one without more a waiver of the other, as a matter of law.

100 N. E. 554.

Sec. 112. When Notice is Dispensed With. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged. Cf. sec. 82.

No. 91.

PROTEST.

sentment where maker's residence or place of ess is not known.

McMASTER'S COMMERCIAL DIGEST,
PAGE 346A,
78 N. W. REP. 58.

$400 ⁰⁰/₁₀₀

Union Ia. October 27 1896.

One year after date we promise to pay to the order of John Jones Four hundred ——— Dollars ~~at~~ with interest.

Value received

Munson West
W. H. West

No. ——— Due ———

GROSS & BOND John Fitzmeyer, Printing Company 121 Fulton St. N.Y.

377

This note is not payable at any particular place in Union.

The makers formerly had a meat market there--but had gone out of business.

The note was protested, the notary's certificate stating that he presented it at their former place of business and at the Citizen's Bank. The court said that this was not sufficient; the certificate should have stated that the notary had made diligent search to find the parties, their residence and place of business and had failed in his attempt.

McMASTER'S COMMERCIAL DIGEST, PAGE 346 A; 78 N. W. REP. 58.

"If the place of business cannot be found or the maker or acceptor has no place for the transaction of financial matters, demand must be made at the residence; and, where the place of business has been abandoned, it will not be enough to make presentation at the old place of business. If the holder does not know where to find the maker or acceptor, he must make the most diligent inquiry before dishonoring the paper by protest for non-payment; and he must pursue the inquiry as long as he does not obtain some definite information as to the whereabouts of the maker or acceptor."

No. 92.

PROTEST.

closing notice for prior indorsers to last
rter.

$160 00/100

St. Paul, Minn. July 7, 1898.

Four months after date I promise to pay to the order of George B. Billings One hundred sixty ——— Dollars at First National Bank Value received

T. B. Ines

No. ——— Due ———

GRAND & BIDWELL John Fallenius Printing Company 121 Fulton St NY

Geo. R. Billings
L. S. Griggs
27 High St
St. Paul, Minn.

This note was handed to a notary, for protest, who did not know the address of Geo. R. Billings, and the notice for Billings was, without any inquiry as to his address, mailed to Griggs--the last indorser. The court said that this was not sufficient--that the notary was bound to make reasonable inquiry as to the address; he should have in this case at least made inquiry of the last indorser who lived in the same city as the notary.

Sec. 113. **Delay in Giving Notice; How Excused.** Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. Cf. sec. 81.

Sec. 114. **When Notice Need not be Given to Drawer.** Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person;
2. Where the drawee is a fictitious person or a person not having capacity to contract;
3. Where the drawer is the person to whom the instrument is presented for payment;
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
5. Where the drawer has countermanded payment.

Sec. 115. **When Notice Need not be Given to Indorser.** Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;
2. Where the indorser is the person to whom the instrument is presented for payment;
3. Where the instrument was made or accepted for his accommodation.

No. 93.

NOTICE OF DISHONOR:
INDORSER'S LIABILITY.

McMASTER'S COMMERCIAL CASES,
1909, PAGE 197A,
164 FED. 296.

$10,000 00/100 — Philadelphia, Pa July 2nd 1903

Four months after date we promise to pay

to the order of Lewis Luckenbach

Ten thousand ~~~~~~~~~~ Dollars

Payable at 1336 Beach St. Philadelphia,

~~Endorsed~~ without dislocation for value received.

Holsclaw Regulated Feed Machine Co.

Henry P. Kingsley Pres't

No _____ Due _____

Frank J. McDonald Sec'y.

COLUMBIA BOND

383

Henry J. Kunzig
Frank J. McDonald
Sommers J. Smith

The payee of this note, Lewis Luckenbach, sued the indorsers above named. It transpired at the trial that the maker of the note, the Holden Regealed Ice and Machine Company, being in need of funds, appealed to Mr. Luckenbach, who loaned the corporntion $10,000 upon the understanding that Kunzig, McDonald and Smith, who were officers, also directors and stockholders in the corporation, would indorse the note. The note was not presented for payment at its maturity, and no formal notice of dishonor was given the indorsers. Luckenbach sued the indorsers, and the defense was that being indorsers they were released from liability on the note because the note was not presented for payment and no notice of its dishonor given to them. The court, however, directed a verdict in favor of the plaintiff. A motion was made by the defendants, the indorsers, to set aside the verdict, but the motion was overruled. The court held that presentment and notice were not necessary, for the reason that the Negotiable Instruments Law provides that presentment for payment is not required to charge an indorser where the instrument was made for his accommodation, and he had no reason to expect that the instrument will be paid if presented. The facts of this case showed clearly that the note was executed for the accommodation of the indorsers. Furthermore, the indorsers were officers of the corporation, the maker, and knew the corporntion had no funds with which to meet the note at its maturity. No knowledge, which they did not already possess, would have been given them by notice of the instrument's dishonor.

Sec. 116. **Notice of Non-Payment Where Acceptance Refused.** Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

Sec. 117. **Effect of Omission to Give Notice of Non-Acceptance.** An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

For text change, see Wisconsin Laws 1906, ch. 78, secs. 1679-20.

Sec. 118. **When Protest Need not be Made; When Must be Made.** Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required, except in the case of foreign bills of exchange. Cf. sec. 129.

ARTICLE VIII.

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

Sec. 119. Instrument; How Discharged. A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor;

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

3. By the intentional concellation thereof by the holder;

4. By any other act which will discharge a simple contract for the payment of money;

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

For omission, see Illinois Rev. Stats. 1909, sec. 119.

No. 94

DISCHARGE: MAKER AS SURETY.

Vanderford's executors set up a claim that testator signed this note as a surety, and not as a joint maker, and that he had been discharged by reason of an extension of time granted by the cashier of the bank, but no claim was made that he was discharged in one or the other particular way specified in the section.

McMASTER'S COMMERCIAL CASES,
1907, PAGE 223A.
66 ATL. 47.

$ 300 00/100 Westminster, Md. August 4th, 1902.

Two months after date we jointly and severally promise to pay to the order of Farmers & Mechanics National Bank of Westminster, Md.

Three hundred and ---------- no/100 Dollars payable at the banking house of the said Farmers & Mechanics National bank of Westminister. For value received, hereby waiving the right of all homestead, stay, and exemption laws.

Garnett Savage
Edwin J. Lawyer.
W. W. Vanderford

No. 1110 Due 4 Oct. 04 Dw

CORLISS-MACY & CO., INC. 93 & 97 WILLIAM ST. NY

Oct. 11, 1902, interest paid to Dec 4 1902

The cashier of the Farmers' and Mechanics' National Bank, the payee of this note, made the above indorsement. In this connection the third signer of the note claimed to be only a surety, and the note on its face is due October 4, 1902. Wm. H. Vanderford, claiming to be a surety, also contended that he was discharged under the Negotiable Instruments Law. The Farmers' and Mechanics' National Bank sued and recovered judgment against the estate of Wm. H. Vanderford, he having died before the commencement of this action. The defendant, the estate of Wm. H. Vanderford, contended that the bank knew that Wm. H. Vanderford was a surety on the note. The court, however, held that there must be an understanding that the joint maker was to be accepted as surety, particularly when the contrary may be implied by the wording of the instrument. Furthermore, the defendant did not show that the bank's cashier had the authority to extend the time of payment of the note. The judgment for plaintiff was affirmed.

114 N. W. 451.

No. 95.

CHECK "IN FULL OF ACCOUNT" PAYMENT.

McMASTER'S COMMERCIAL DIGEST, PAGE 262 A.

Huntington N.Y. Jan'y 16. 1898. No. 726.

Bank of Huntington

Pay to the order of James Jones and Company $220.00

Two hundred twenty and no/100 Dollars.

in full of all demands to date.

T. L. French

Stewart Warren & Co. Lith. 29 Howard St. N.Y.

391

If the maker of this check owed Jones & Co. more than $220 and the amount was liquidated and there was no dispute about it, then Jones & Co. could collect the balance due, even if they indorsed and collected this check; otherwise if the amount was in dispute or unliquidated.

McMASTER'S COMMERCIAL DIGEST,
PAGES 262 A, 170A, 90A;
49 NO. E. REP. 1079;
31 SO. E REP 184.

"Here there is no dispute as to the amount due. The note was for a fixed and definite sum, it bore interest at a fixed per cent., and it became a mere question of arithmetical calculation. The note sued upon was due, and under these facts an agreement to accept a sum less than the amount due, in the absence of a valid consideration, was not binding."

116 IND. 370; 19 N. E. 199; 126 IND. 461, 27 N. E. 132; 8 IND. APP. 481, 35 N. E. 1030; 33 ATL. 263; 41 N. E. 839; 167 ILL. 240; 87 ILL. APP. 631; 97 IND. 223. 70 N. W. 622.

Instances where the amount due was in controversy and the retention of the check operated as payment.

43 CONN 465; 48 MO. APP. 524; 43 VT. 201, 135 N. Y 231; 146 N. Y. 328; 121 N. C. 909.

No. 96.

PARTNERSHIP: SURETY RELEASED.

Purchase by a firm of a note of one of the partners extinguishes the note both as to the maker and indorsers.

McMASTER'S COMMERCIAL DIGEST, PAGE 185 A; 46 SO. W. REP. 675.

$700# Henderson Ky May 7 1907.

Four Months after date we promise to pay to the order of Logan & Co.

Seven Hundred Dollars

at First Nat'l Bank

Value received

No. _____ Due _____

James W Barkley

W. J. Barkley

Logan & G

This note was assigned to the firm of Johnson & Co., of which J. W. Barkley was a member. This released all of the makers of the note. J. W. Barkley could not be co-obligor and co-obligee at the same time, as he would be if his liability oontinued after Johnson & Co. bought the note. J. W. Barkley being thus released without the consent of W. F. Barkley, it would operate as a discharge of the liability of W. F. Barkley.

McMASTER'S COMMERCIAL DIGEST.
PAGE 165 A.

Sec. 120. **When Persons Secondarily Liable Are Discharged.** A person secondarily liable on the instrument is discharged:

1. By any act which discharges the instrument;

2. By the intentional cancellation of his signature by the holder;

3. By the discharge of a prior party;

4. By a valid tender of payment made by a prior party;

5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved.

But any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument, unless the rights of recourse against such party is expressly reserved.

A number of the States having enacted a Negotiable Instruments Law omit substitute clauses and except. See Laws.

No. 97.

EXTENSION OF TIME OF PAYMENT: PARTNERSHIP SURETY.

$300.00 Peabody, Kans. May 3. 1900

Two months after date we promise to pay to the order of J. K. Dingham

Three Hundred 00/100 Dollars

at First National Bank

Value received

No. Due July 6 '9.

L. H. Miller

J. G. Gleason

MA, VOL. 2, McMASTER'S REVERSED CASES.

J. K. Bingham was the owner of this note for $300 signed, as makers, by Miller and Pilsbury, who were partners. The money was borrowed to pay partnership debts and at its maturity Miller paid $74, that being his share of the note to pay as between himself and his partner. The holder of the note did not release Miller in any way when he made the payment, *although it was understood at the time* by all parties that as between the partners Pilsbury was to pay the balance of the note. Subsequently the holder of the note took interest in advance for two months from Pilsbury. This, it was held on appeal, released Miller.

"It is familiar law that if, on the dissolution of a partnership, one partner assumes and agrees to pay the debts of the firm, as between himself and the retiring partner he becomes the principal and the other the surety as to such debts; and a creditor of the firm, with knowledge of their agreement, is bound to so treat them in this subsequent dealings. Colgrove v. Tallman, 2 Lans. 97; Id., 67 N. Y. 95, 35 Mich. 42, 20 W. Va. 614, 657; 73 Pa. 459; 56 N. Y. 402, 406; 103 Mich. 247.

"The only remaining question is whether the payment of interest in advance constitutes an agreement to extend the time of payment, within the meaning of this rule. Upon this subject the authorities are not entirely harmonious, but, as said by Mr. Brandt, 'the decided weight of authority, and, it seems, the better reason, is that the payment in advance of interest on the debt by the principal to the creditor is of itself, without more, sufficient *prima facie* evidence of an agreement to extend the time of payment for the period for which the interest is paid, *and works the discharge of the surety.*' 2 Brandt, Sur. (2d Ed.) 352; 14 Wash. 677; 15 Wash. 230; 50 Ind. 376; 30 Vt. 711."

No. 98.

EXTENSION OF TIME OF PAYMENT: RELEASE OF INDORSER: RELEASE OF COLLATERAL.

McMASTER'S COMMERCIAL DIGEST. PAGE 584 A.

$2000 00 Canton, Pa, July, 1, 1900

Two months after date I promise to pay to the order of Matilda F. Bishop

Two Thousand 00 Dollars

at Canton Bank

Value received

No. Due

N. H. Strong

Matilda Y. Bishop.

The C. National Bank held a note for $2.000 made by N. H. Strong and indorsed by Matilda Y. Bishop. The indorser died, and the bank, in order to reduce its past-due items, took a two months' judgment note made by Strong, on which interest was paid in advance, holding the old note as collateral. The new note contained the following recital:

"As collateral security, I have delivered note of Nelson H. Strong to Matilda Y. Bishop, indorsed by her, for same amount, which I hereby authorize and empower the holders hereof, on default in payment at maturity, with a view to its liquidation, and of all interest and costs thereon, to sell and transfer, in whole or in part, without any previous demand upon or notice to me, either at brokers' board or at public or private sale, with the right of becoming the purchaser and absolute owner thereof free of all trusts and claims should such sale be made at brokers' board, or be public."

It was held that this transaction released the estate of Matilda Y. Bishop. The Supreme Court of Pennsylvania said in part:

"Thus it appears by all the testimony in the case without the least contradiction: (1) That the bank, being the holder of an accommodation note which Strong was the maker and Mrs. Bishop the indorser, accepted from Strong his individual judgment note for the same identical debt, and agreed to hold the former note, indorsed by Mrs. Bishop, as collateral security for the payment of the same. (2) That the bank, by accepting the individual note of Strong, payable at two months after the maturity of the indorsed note, thereby extended the time of payment of the debt for the definite period of two months, and subsequently granted other extensions of definite time for the payment of the same debt for the continuous period of two years. (3) That at the time of the first extension the bank accepted payment in advance from Strong of the interest accruing for the definite extended time for the payment of the debt, and continued to accept similar definite payments of interest in advance for every renewal of the debt for two years further. (4) That the debt the payment of which was thus extended was the identical debt which was represented by the note which was indorsed by Mrs. Bishop. The renewal was given for the very same debt, and for extending the time of payment of the same debt, for which the indorsed note was given. (5) The whole agreement for the extension of the time of payment was made by the bank with Strong, the maker alone, and nothing was said or done in the course of the transaction by any representative of Mrs. Bishop. Neither the representatives nor the heirs of Mrs. Bishop had any notice of the extension. It follows, necessarily, from this condition of things, that the bank disabled itself from taking any proceedings for the collection of the debt from Strong during all the period of the renewals of Strong's notes after the maturity of the note which was indorsed by Mrs. Bishop.

"Upon every principle pertaining to this subject, and upon all the authorities, the estate of Mrs. Bishop was discharged from all liability by these proceedings."

45 AT. REP. 552. (PENNSYLVANIA.)
MOMASTER'S COMMERCIAL DIGEST, PAGE 564 A.

No. 99.

EXTENSION OF TIME OF PAYMENT: RELEASE OF SURETY WHO SIGNED APPARENTLY AS MAKER.

$2000 00/100 Fort Worth, Tex Dec. 23 1900

Three months after date we, I, or either of us, promise to pay to the order of ourselves

Two Thousand Dollars

at State National Bank

Value received

The Stratton White Co.
By. G. E. White. V. Pres.

No. Due

H. H. White. Curt White.

McMASTER'S COMMERCIAL DIGEST PAGE 385 A.

The Stratton White Co
By G E White. Vice Pres

G. E. & R. E White

H. K. White and David White, although they appeared as makers of the note, were sureties only, a fact known to the bank that discounted the notes. After the maturity of the notes interest for three months in advance was paid by the officers of the Stratton-White Company. This released H. K. White and David White. The court said in part:

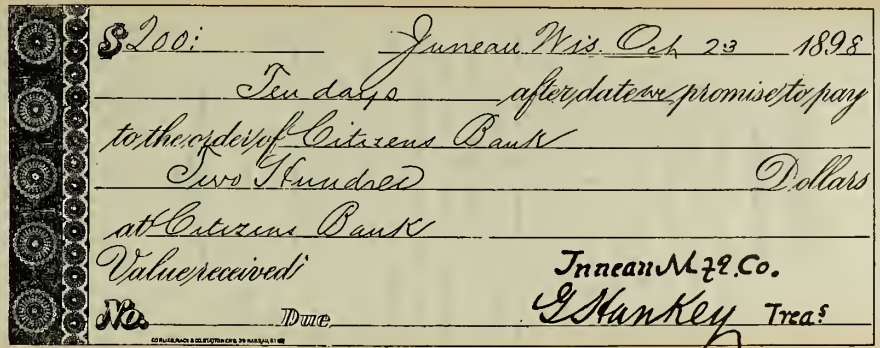
On the note first due were the following entries: "March 23, 1896, $50 interest paid on the within note to June 23, 1896. $50 interest paid on within note to September 21st, 1896. $50, September 22d, 1896. $50 interest paid on within note to December 1st, 1896." On the other note were the following entries: "June 23rd, 1896, $50 interest paid on within note to September 24, 1896. September 24, 1896, $33.35 interest paid on within note to November 21st, 1896." In addition to the evidence of the foregoing entries, we find that there was an agreement on the part of appellant with Stratton-White Company and G. E. and R. I. White to extend the times of payment of the notes to the different dates for which the interest was paid, in consideration of the payment of such interest in advance, and that such extensions were made without the knowledge or consent of David White, or H. K. White, or his executrix, who were sureties on the notes. Neither of them had any interest in the Stratton-White Company, and it was known to appellant when they obtained the paper and loaned the money that David White and H. K. White were only sureties." 63 Ill. App. 517; 39 S. W. 1092; 37 Me. 105; 31 Ohio St. 637; 87 Tex. 578; 43 N. H. 551; 50 Pac. 271.

MOMASTER'S COMMERCIAL DIGEST, PAGE 366 A.

No. 100.

SURETY:
EXTENSION OF TIME OF PAYMENT:
RELEASE OF ONE SURETY
REDUCED LIABILITY OF ANOTHER.

McMASTER'S COMMERCIAL DIGEST,
PAGE 294 A.



$200: Juneau Wis. Oct 23 1898

Ten days after date we promise to pay
to the order of Citizens Bank
Two Hundred Dollars
at Citizens Bank
Value received
No. Due

Juneau Mfg. Co.
G Hankey Treas

G Hankey

M Hartheim

When this note was due interest for two months in advance was paid by Hanky, without the knowledge of Hartheim.

The receiving of this interest by the bank, was an extension of time of payment which released Hartheim. Hanky having made the payment and thus asked for the extension was not released, but the court said that he could only be held for one-half of the note,--for if Hartheim had not been released by the action of the bank, Hanky could have forced Hartheim to pay or contribute one-half of the amount of the note.

McMASTER'S COMMERCIAL DIGEST.
PAGE 294 A;
102 WIS. 41.

Sec. 121. **Right of Party Who Discharges Instrument.** Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

Sec. 122. **Renunciation by Holder.** The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor, made at or after the maturity of the instrument, discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Sec. 123. **Cancellation; Unintentional; Burden of Proof.** A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

Sec. 124. **Alteration of Instrument; Effect of.** Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers. But when an instrument has been materially altered and is in the hands of

a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

For text changes, see Illinois Rev. Stats. 1909, sec. 124; New Mexico Laws 1907, ch. 83, sec. 124; Wisconsin Laws 1906, ch. 78, sec. 1660-131.

Sec. 125. What Constitutes a Material Alteration. Any alteration which changes:

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or relation of the parties;
5. The medium or currency in which payment is to be made; or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

No. 101.

EFFECT OF MATERIAL ALTERATION.

McMASTER'S COMMERCIAL CASES,
1909, PAGE 97A,
84 N. E. 1098.

$ 1200. Mt. Ayr, Ind., January 27, 1906

Six months after date we jointly and severally promise to pay to

the order of McLaughlin Bros.

Twelve hundred and no/100 Dollars

at the First National Bank, Mt. Ayr, Ind.

Value received

No.

Due

Everett Halstead
Raymond Brith
Guy Duval
William H. Cary
William C. Wilson

Mr. Loughlin Bros
Def 200 by B. B. Miller

The plaintiff in this action, the Citizens' Savings Bank, sued the makers of this note and the defense set up by the makers was that the note had been materially altered subsequent to its execution and without their knowledge and consent, and that they were thereby released. It is a well-settled principle of law that a material alteration renders a note invalid if the note is altered subsequent to its execution and without the consent of the indorsers or makers. In this case the makers contended that the note was materially altered, in that when they signed it the name of one B. B. Miller was upon it, and subsequently this name was erased. The court held that the erasure of the name of one of the joint makers of the note after delivery and without the knowledge of the other makers was a material alteration. The plaintiff denied that the name of Miller was ever on the note, and Miller himself testified that he did not sign the note, but there is a credit on the back of the note showing a payment of $200 by Miller, and the jury found with the defendants on this question and the Appellate Court of Indiana affirmed the judgment of the trial court in favor of the defendants, holding that the makers were released by the material alteration of the note, subsequent to its execution and without the consent of the other joint makers.

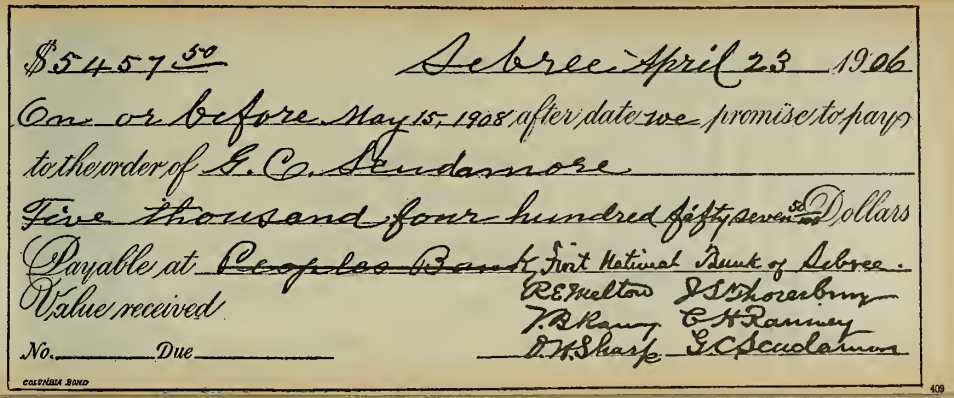
84 N. E. 1098.

NO. 102.

ALTERATION.

Substituting name of reorganized bank not a material alteration.

McMASTER'S COMMERCIAL CASES, 1912, PAGE 100A, 190 FED. 126.



$5457.50 Debree April 23 1906

On or before May 15, 1908, after date we promise to pay to the order of E. C. Sundamore

Five thousand four hundred fifty seven 50/100 Dollars

Payable at ~~Peoples Bank~~ First National Bank of Debree.

Value received

No. Due

R. E. Welton J. S. Thorenburg
T. B. Ramey C. H. Ramney
D. K. Sharp E. C. Scudamore

COLUMBIA BOND

This note was originally made payable at People's Bank. Subsequently the People's Bank reorganized as the First National Bank of Sebree. All of the parties knew of this change. The note itself was then altered so as to be payable at "First National Bank of Sebree." Held that the alteration was immaterial and had no effect on the liability of the parties.

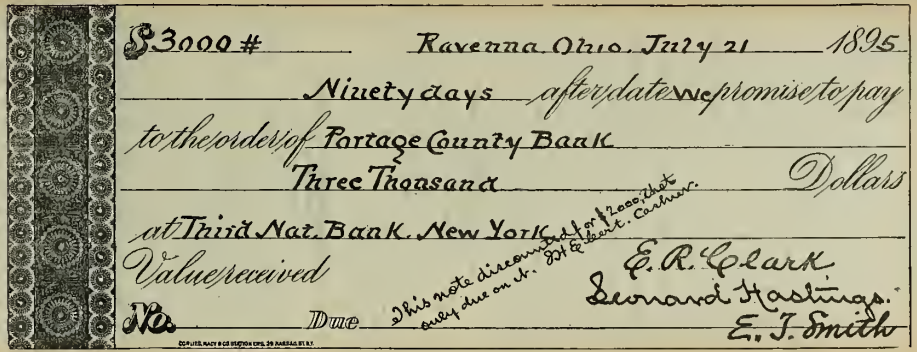
190 FED. 126.

No. 103.

ALTERATION.

A material alteration of commercial paper is void, even if innocently made, and the liability of the makers and indorsers reduced in amount.

McMASTER'S COMMERCIAL DIGEST, PAGE 28 A.


$3000 #
Ravenna Ohio. July 21 1895
Ninety days after date we promise to pay
to the order of Portage County Bank
Three Thousand Dollars
at Third Nat. Bank. New York
Value received
No. Due
This note discounted for $3000 that
only due on it. Dft & Grant. Cashier.
E. R. Clark
Leonard Hastings.
E. J. Smith

E. T. Smith was a surety on this note, which fact was known to the Portage County Bank. When the note was presented for discount by Clark, the bank declined to discount for him for more than $2000; and, retaining the note, they advanced $2000, making memorandum that such amount only was advanced and due on it. This released Smith.

An alteration decreasing the amount of a note is as fatal as one increasing it.

McMASTER'S COMMERCIAL DIGEST, PAGES 28 A; 35 A; 6 OHIO 405; 67 ME. 554.

Adding a place of payment or striking one out is a fatal alteration.

McMASTER'S COMMERCIAL DIGEST, PAGE 31 A; 9 OHIO 443.

"LIBBEY, J. (Part of opinion omitted.) Undoubtedly the change of a note for $500 to one for $400 is a material alteration of it; and if made without his consent will discharge a signer or endorser.

"True, the change is not disadvantageous to one who is holden to pay, since it only reduces the amount for which he would otherwise be liable; but it makes another and different contract of it; and any signer or indorser has a right to say, and can say truly, that the note in its altered form is not his contract. * * * "

67 MAINE, 554; 90 ALA. 553; 31 CONN. 181; 110 IND. 242.

No. 104.

ALTERATION.

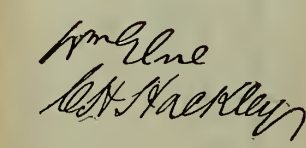
[inserting name of second indorser as additional
ree.

McMASTER'S COMMERCIAL DIGEST.
PAGE 30A;
37 MICH. 466

$350 ⁰⁰/₁₀₀ Muskegon, Mich. Apl 27 1896

Three months after date I promise to pay
to the order of William Glue. Charles H Hackley
Three Hundred & Fifty ⁰⁰/₁₀₀ Dollars
at First National Bank.
Value received
No. Due Allen G. Smith

CLIFFORD, MACY & CO. (SUCCESSORS TO E. O. H. CLIFFORD) 26 BARCLAY ST. N.Y.



The maker of this note drew it up payable to the order of Glue, who indorsed it. The maker then took it to Hackley who indorsed it. The maker, in good faith, subsequently wrote Hackley's name on as additional payee and got the money on the note from one Aldrich, who did not know of the alteration caused by writing Hackley's name as payee. The indorsers were released by the alteration.

McMASTER'S COMMERCIAL DIGEST.
PAGE 30 A;
37 MICH. 468.

"It is settled law in this State that the material alteration of a promissory note, made at the instance of the payee, and without the knowledge of the maker, releases the latter from all liability on the note. 80 Ind. 83; 79 Ind. 84; 75 Ind. 422. It is also firmly settled that the addition of the name of a party as maker is a material alteration of the instrument." 7 Blackf. 61; 17 Ind. 161; 20 Ind. 139; 90 Ind. 515; 21 Ohio St. 163; 59 Iowa 545; 75 Mo. 178; 18 N. J. Eq. 459; 17 Wis. 232.

Restoring the altered parts will not revive the instrument or the liability of the parties. 121 Miss. 110; 54 Ind. 248; 51 Iowa.

An alteration of a mortgage will prevent its foreclosure even by an innocent purchaser. 28 Minn. 464, and such alteration will vitiate an insurance policy. 101 N. Y. 498; and a lease, 91 Pa. St. 336; 18 Vt. 460.

An unauthorized alteration in a will may destroy the clause altered, but it does not affect other clauses. 62 Ill. 368; 20 Minn. 245.

No. 105.

ALTERATION

Alteration of date of check.

McMASTER'S COMMERCIAL DIGEST
PAGE 34A,

100 N. Y. 50.

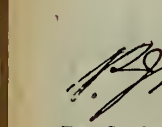
No 107 New York, Apl 21. 1900

West Side Bank

Pay to the order of P. J. Morgan

Seven Hundred Dollars.

$700 # Wm Crawford



Wm. C. Crawford, intending to be absent from his place of business for a few days, and until after April 22, the regular pay day for his employees. drew his check on his bank, dated April 22, paying to the order of M., his clerk, and directed the clerk to draw the money on the 22d, in case he, Crawford, did not return. Crawford did not return until the 23d or thereafter.

On the 21st the clerk altered the date of the check to April 21st, and drew the money and absconded. The check was charged to the account of Crawford, but the bank had to make the amount good.

McMASTER'S COMMERCIAL DIGEST, PAGE 34 A; 100 N. Y. 50

"The date of a note is a material part of it, and a change thereof is a material alteration, and vitiates the note, without regard to whether the maker is prejudiced or benefited, or whether the time of payment is hastened or delayed. It is not the contract which he executed." 21 Kan. 555; 6 Wall. 80.

52 PAC. 577.

"But it is said that the alteration in this case is immaterial. Hitherto we have tolerated no alteration in a contract, and we have always regarded, and still regard, any change on the face of a paper as a nullifying alteration."

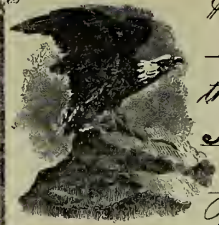
46 S. W. 300.

No. 106.

ALTERATION: ACCEPTANCE: COLLECTIONS.

...sing the words "In New York Exchange" in ...ft,—an alteration.

McMASTER'S COMMERCIAL DIGEST, PAGE 24 A.



$1354.39 New York. Dec. 7 1900

Ten days after sight Pay to

the order of Robert W Browne

Thirteen Hundred Fifty Four & 39/100 Dollars

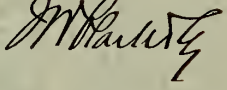
In New York Exchange

Value received, and charge the same to account of

Wm R. Waller.

To Thomas E. Dowdell & Co

No. Cleveland Ohio



If the collecting bank allowed Dowdell & Co. to erase the words "In New York Exchange" in accepting this draft, it would doubtless be an alteration that would make the collecting bank liable for its payment.

McMASTER'S COMMERCIAL DIGEST, PAGE 24 A.

TITLE II. BILLS OF EXCHANGE.

ARTICLE I.

FORM AND INTERPRETATION.

Sec. 126. **Bill of Exchange Defined.** A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

Sec. 127. **Bill not an Assignment of Funds in Hands of Drawee.** A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof and the drawee is not liable on the bill unless and until he accepts the same. Checks, cf. sec. 189.

Sec. 128. **Bill Addressed to More Than One Drawee.** A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

Sec. 129 **Inland and Foreign Bills of Exchange.** An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within the State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

NO. 107.

CONFLICT OF LAWS.

e N. I. L., sec. 46.

McMASTER'S COMMERCIAL CASES,
1908, PAGE 166A.
82 N. E. 134.

"New York, Jan. 8, 1901.

"Exchange for £ 2,058 6/8.

"On demand of this original cheque (duplicate unpaid) pay to the order of Rogers, Brown & Company, Twenty-two hundred and fifty-eight pounds 6/8, payable at rate for bankers cheques on London value received and charge the same to account of pig-iron per S.S.Quarnero.

Rogers, Brown & Co.

"To Messs. A. Herm. Fraenckl Soehne,
"Ruepgasse, Vienna, Austria.
"No. 75."

Rogers, Brown & Co.

Gustav Amsinck & Co.

This foreign bill of exchange was drawn in New York upon a firm in Vienna, Austria, to whom the makers, Rogers, Brown & Company, had sold some iron. The bill was indorsed and transferred by the makers to the plaintiffs in this action, Gustav Amsinck and others, constituting the firm of Gustav Amsinck & Co., in New York, and the plaintiffs forwarded the bill to their agent in Vienna, Austria. The agent of the plaintiffs presented the bill to the drawees, Messrs. A. Herin und Peneckel Sochne, several times, and each time the bill was presented, by the agents of the plaintiffs the drawees requested that the presentment be withdrawn for the reason that there were some differences between the drawees and the drawer which were in the process of adjustment. Finally, on instructions from New York, the agent formally presented the bill, demanded payment, which was refused, and the bill was formally protested. The iron which was shipped by the drawers of the bill was not accepted by the drawees and the same was sold at a loss of approximately $4,000, leaving, of course, the amount of this loss still due upon the bill. The drawers, Rogers, Brown & Company, contended that they were relieved of liability by the nonprotest of the note. The appellants and plaintiffs admitted that, if the laws of New York governed, the defendants would be relieved of liability on the bill, but they contended that the laws of Austria were controlling in this case, for the reason that the bill was made payable in Austria. The laws of Austrin provided that no notice of protect was necessary upon this kind of a bill to charge the maker. The laws of New York of course provide that n notice of protest is necessary to charge the maker. The Court of Appeals held that the law of the place where the bill was drawn was controlling, and as the bill was drawn in the State of New York, and as the same was indorsed and transfered in New York, the laws of New York would govern, and as the New York laws required the presentment for payment and a notice of dishonor, in case the bill was not paid, the defendant was relieved of liability because these steps had not been followed by the agent of the plaintiffs to charge the defendants, the drawers of the bill.

82 N. E. 134.

Sec. 130. **When Bill May be Treated as a Promissory Note.** Where in a bill the drawer and drawee are the same person, or when the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument at his option, either as a bill of exchange or a promissory note. Cf. sec. 17, cl. 5.

Sec. 131. **Referee in Case of Need.** The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need or not as he may see fit.

ARTICLE II.

ACCEPTANCE.

Sec. 132. **Acceptance; How Made.** The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. For Liability, cf. sec. 62.

Sec. 133. **Holder Entitled to Acceptance on Face of Bill.** The holder of a bill presenting the same for acceptance may require that the acceptance may be written on the bill and if such request is refused, may treat the bill as dishonored. Cf. sec., post.

No. 108.

FORM OF ACCEPTANCE.

McMASTER'S COMMERCIAL CASES,
1907, PAGE 87A.
87 PAC. 746.

No. _____ Adrian, Mich Oct. 15 1903

First National Bank of Atchison Kansas

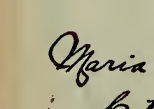
PAY TO THE ORDER OF Maria C. Donald or bearer

Three Hundred & Fifty —— DOLLARS

$ 350 J. F. Donald

EDWARD V. BROKAW & BRO., 56 BROAD ST., N.Y.

427



In an action to recover the amount of thie check, it appeared that the plaintiff, the Commercial Savings Bank, doing business in Adrian, Mich., before casbing same at the instance of ono C. B. Bennett, asked the drawer and defendant, the First National Bank of Atchison, by telegraph, "Is J. F. Donald's check on you, $350, good?" The defendant bank answered by wire: "J. F. Donald's check is good for eum named." The trial was bad in Kansas courts, the question raised on the facts wae whether the answer telegraphed by the Atchison bank to the Adrian bank involved as matter of law an acceptance of the check. For, before its presentation for payment, payment had been prohibited by the drawer, Donald. The law of Kansas provides that a person shall not be charged within that State as an acceptor of a bill of exchange except in writing and signed by himself or his agent. The Supreme Court of Kansas held that the telegraphed reply of the Atchison bank to the question of the Adrian bank did not constitute such an acceptance of the check according to law as to find that bank to reimburse the Adrian bank for its loss.

Sec. 134. **Acceptance by Separate Instrument.** Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, upon the faith thereof, receives the bill for value.

For alteration in text, Illinois Rev. Stat. 1909, sec. 133; South Dakota Laws 1913, ch. 279, sec. 133.

Sec. 135. **Promise to Accept; When Equivalent to Acceptance.** An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

Sec. 136. **Time Allowed Drawee to Accept.** The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation.

Sec. 137. **Liability of Drawee Retaining or Destroying Bill.** Where a drawee to whom a bill is dclivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to to the holder, he will be deemed to have accepted the same.

For variation in text, see Illinois Rev. Stats. 1909, section omitted; likewise South Dakota Laws 1913, ch. 279.

Sec. 138. **Acceptance of Incomplete Bill.** A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

Illinois makes two sections of this text and varies by using the word "payable" in the second section so formed.

Sec. 139. **Kinds of Acceptance.** An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

Sec. 140. **What Constitutes a General Acceptance.** An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

Sec. 141. **Qualified Acceptance.** An acceptance is qualified which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated:

2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

3. Local, that is to say, an acceptance to pay only at a particular place;

4. Qualified as to time;

5. The acceptance of one or more of the drawees, but not of all.

No. 109.

QUALIFIED ACCEPTANCE.

This acceptance was not a change "of amount, of ate or of date of payment."

McMASTER'S COMMERCIAL CASES.
1906. PAGE 152A.
90 S. W. 123.

$800.— Fox Lake, Wis. May 30 1903.

At sight Pay to the

Order of W. A. Warren

Eight hundred ——— Dollars

Value received, and charge the same to account of

With exchange

To Citizens National Bank of

No. King City, Mo. J. C. Vandercar.

Pay to the order of
State Bank of Fox Lake
W. A. Warren

It will be observed that the draft in illustration is drawn "with exchange." These two words added to a contract which had been submitted by the State Bank of Fox Lake, plaintiff, against the Citizens' National Bank of King City, in the collection of the face of the draft.

The drawer of the draft, Vandeveer, purchased a horse of one Warren, at Fox Lake, Wis., and delivered the draft to the latter in payment. Warren indorsed the same to the State Bank, who, on the same day, mailed it to defendant, the Citizens' National Bank, and in the meantime telegraphed to the latter: "Will you honor draft, J. C. Vandeveer, eight hundred dollars?" The next day, May 31st, defendant answered: "We will honor draft, J. C. Vandeveer, eight hundred dollars." When the draft was presented, payment was refused. The Kansas City Court of Appeals affirmed the judgments of the trial court. The court holds that the words "with exchange" varies the contract between the parties so materially that the defendant was under no obligation to honor the draft.

The terms of the telegrams, both question and answer, were specific and exact. The draft did not correspond with either, hence it was an instrument outside of the agreement.

90 S. W. 193.

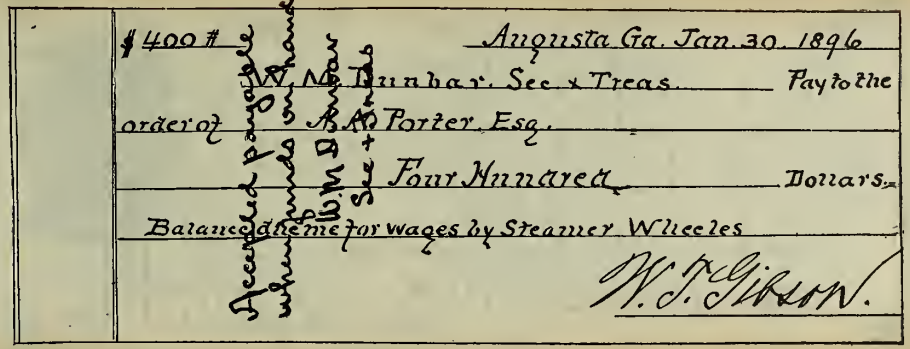
Sec. 142. **Rights of Parties as to Qualified Acceptance.** The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

NO. 110.

ACCEPTANCE: QUALIFIED: INDORSER.

The drawer of a draft is entitled to an unqualified acceptance of it. If the holder or his agent takes a qualified acceptance, the drawer and indorsers are released.

McMASTER'S COMMERCIAL DIGEST, PAGE 224 A.



In allowing Dunbar to accept this draft "when funds on hand," Porter released Gibson from any liability on the draft.

McMASTER'S COMMERCIAL DIGEST, PAGE 224 A; 75 GA. 33.

"When a draft is given directing the drawee to pay absolutely a sum of money to the payee, it ie the right of the payee to have an unconditional and unqualified acceptance of the same: and if he chooses, without the consent of the drawer, to take a conditional, limited or qualified acceptance of the draft he thereby releases the drawer from all liability rom the draft. See 1 Daniel, Neg. Inst., Sec. 510; Chitty on Bills, 340; Story, Sec. 204."

75 GA. 33.

The following conditions in the acceptance have been held bad:

Where the draft was drawn at sight and it was accepted payable at a future date. 25. Miss. 376.

Acceptance for payment of part 73 Mo. 179. Acceptance in a different place from that at which the drawee is addressed. 3 Me. 147: No. 59.

Acceptance when building is completed. 105 Mass. 401: When lumber arrives at market. 25 Wis. 37.

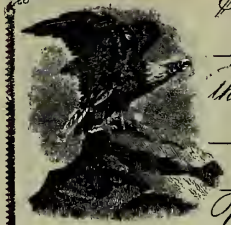
No. 111.

QUALIFIED ACCEPTANCE:

DISCHARGE OF PARTIES.

The drawee of a draft must accept it payable in town or city in which the draft is addressed to ; acceptance in another place will release the er and indorsers.

McMASTER'S COMMERCIAL DIGEST, PAGE 223 A; 31 BARB. 403.



$500. Rochester N.Y. June 4 1900

At thirty days sight Pay to

the order of myself

Five Hundred Dollars

Value received and charge the same to account of

To A. A. Adams & Co.

No. Jersey City N.J.

Accepted June 6 1900 Payable at National Bank of New York

A. A. Adams

L. W. Bissell

CENTURY BOND

437

D. W. Bissell

F. D. McLean

The bank to which this draft was sent for collection allowed it to be accepted payable in New York instead of Jersey City. This would release the makers and indorsers, and make the collecting bank absolutely liable for its payment by the acceptors.

McMASTER'S COMMERCIAL DIGEST
PAGE 223 A;
31 BARB. 403.

. "But an acceptance of a bill at a different place from that of the residence of the drawee . . . must be a material departure from the bill. . . . If the place of payment, in such a case, may be fixed ten miles distant from the place of residence of the acceptor, it may be 100 or 150 miles with equal reason. I think there can be no safe rule, except to confine the power of designation, by the acceptor, of the place of payment to some place within the limits of his own city, town or village."

* * * * *

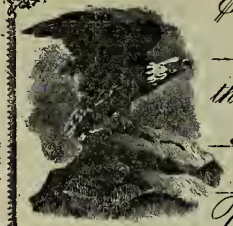
"This question is very elaborately discussed in the answers of the twelve judges of England to an inquiry of the House of Lords in the case of Rowe v. Young, reported in 6 Eng. Com. Law Rep. 63 (s. c., 2 Brod. & Bing. 165). In that case all the judges, in opinions given seriatim, substantially agreed in opinion that 'a qualified acceptance, making a bill payable at another town, taken by the holder without the assent of the drawer, would discharge the drawer.'"

NO. 112.

ACCEPTANCE: ALTERATION: "NEW YORK EXCHANGE."

Acceptor of draft must not in accepting, vary the sum of payment from money to "in New York Exchange;" that is, a promise to pay by inland bill on New York.

McMASTER'S COMMERCIAL DIGEST, PAGE 24A, 69 N. W. REP. 1148.



Accepted Jan 31 1900 Payable at First Nat'l Bank Exchange Brooklyn N.Y.

$1673.-- Brooklyn N.Y. Jan 27 1900

One month after date Pay to

the order of John Good & Co.

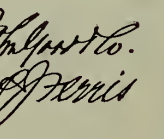
Sixteen Hundred & Seventy Three Dollars

Value received and charge the same to account of

R.W. Rose

To James Hill & Co

No. Halstead Minn.



The bank to which this draft was sent for acceptance and collection, in allowing it to be accepted "payable by New York Exchange" released the maker and indorsers.

The draft was drawn payable in "dollars."

New York Exchange is an inland bill or bills of exchange--or a check on New York--not money. "In New York Exchange" would be equally objectionable.

The Negotiable Instruments Law provides that adding "with exchange" to a bill does not destroy its negotiability. "In exchange" and "with exchange" are not synonomous terms.

This instrument in acceptance has been changed from a negotiable to a non-negotiable instrument. The holder cannot demand in payment thereof $1,673 in money, plus the cost of exchange; for the maker is not bound to discharge his obligation except by means of inland bills on New York. Nor can the acceptor tender in payment $1,673 in money, with the cost of exchange; for his promise is to make payment by inland bills, which he must purchase in the market. The instrument, then, is not payable in money, and is, therefore, not a bill of exchange, within the law merchant. 13 Minn. 90: 4 Mass. 245; 14 Pet. 293.

SEE No. 105.

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

Sec. 143. **When Presentment for Acceptance Must be Made.** Presentment for acceptance must be made:

1. When the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Sec. 144. **When Failure to Present Releases Drawer and Indorser.** Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged. Reasonable time, cf. sec. 193.

Sec. 145. **Presentment; How Made.** Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and

1. Where a bill is addressed to two or more drawers who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

2. Where the drawee is dead, presentment may me made to his personal representative;

3. Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. Cf. sec. 72.

Sec. 146. **On What Days Presentment May be Made.** A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 72 and 85 of this Act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12 o'clock noon on that day.

Sec. 147. **Presentment When Time is Insufficient.** Where the holder of a bill drawn elsewhere than at the place of business or the residence of the drawee, has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

Sec. 148. **When Presentment is Excused.** Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill;

2. Where, after the excise of reasonable diligence, presentment cannot be made;

3. Where, although presentment has been irregular, acceptance has been refused on some other ground. Clause 2, cf. sec. 82.

Sec. 149. **When Dishonored by Non-Acceptance.** A bill is dishonored by non-acceptance.

1. When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted.

No. 113.

ACCEPTANCE: REFUSAL:

DISHONOR.

McMASTER'S COMMERCIAL CASES,
1909, PAGE 85A.
111 N. Y. SUPP. 927.

£ 13.750 New York, N. Y. Aug. 1 1905

Sixty days after date Pay to the

Order of Philip Mairo

Thirteen thousand seven hundred and fifty Lire

Value received and charge the same to account of

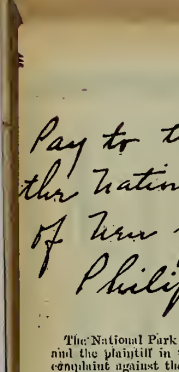
To Philip Sartta

Genoa Italy

No.

Philip Mairo

Accepted Aug 29 1905 Philip Sartta



The National Park Bank is the holder of this draft and the plaintiff in this action, and it stated in its complaint against the drawee, Philip S. Saitta, that the draft was drawn by Philip Mauro to the order of Philip Mauro upon Philip S. Saitta in Genoa, Italy, that the bill was accepted subsequently by said Saitta and thereafter the bank became the holder before maturity and for value. The defendant answered and attempted to establish that the bill was presented to the National Park Bank for discount and discounted by it, and at the time it was presented for discount, the bank received from the defendant certain bills of lading, upon the security of which the bill was discounted, and that thereafter the defendant accepted the draft upon the understanding with the Banca Commerciale, the agent of the plaintiff, National Park Bank, that his acceptance was in consideration of the delivery to him of these bills of lading and that his acceptance was to be stricken from the draft unless the bills of lading were delivered to him. The defendant obtained a very favorable charge on this point from the court to the jury and notwithstanding this favorable charge, the jury decided this question of fact against the defendant. The defendant admits the execution of the draft, the acceptance by him and the delivery and discount by the plaintiff for value before maturity and the defense is failure of consideration. Judgment was rendered in favor of the plaintiff, which the Appellate Division affirmed, and in its opinion quotes several sections of the Negotiable Instruments Law, which can be summed up as follows: That every person whose signature appears upon a negotiable instrument is presumed to have become a party thereto for value, and that the holder of a bill may treat the same as dishonored if acceptance of the drawee is refused or cannot be obtained, and where a bill is presented and is not accepted the holder has an immediate right of recourse against the drawer and indorsers.

The Appellate Court also called attention to the fact that when a bill of exchange is drawn there is an implied representation upon the part of the drawer that he has funds in the hands of the drawee sufficient to pay the draft and that when the bill of exchange is accepted by the drawee he virtually admits the implied representation of the drawer. It being conceded that the plaintiff was a bona fide holder for value, the laws applicable to bills of exchange establish that the defendant failed in his defense of want of consideration flowing for his acceptance.

Sec. 150. **Duty of Holder Where Bill is not Accepted.** Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers. Prescribed time, cf. sec. 136.

Sec. 151. **Rights of Holder Where Bill is not Accepted.** When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

Sec. 150. Duty of Holder Where Bill is not Accepted. [illegible] is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers. Prescribed time, cf. sec. 136.

Sec. 151. Rights of Holder Where Bill is not Accepted. [illegible] bill is dishonored by non-acceptance an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

No: 113A.

Form 136 — Published by P. F. Brewer & Co. 68 Liberty St. New York

TRADE ACCEPTANCE

No. 162 — New York May 4 1919 — $ 3612 62/100

Ninety after date pay to the order of OURSELVES

Thirty six hundred & twelve 62/100 Dollars

The obligation of the acceptor hereof arises out of the purchase of goods from the drawer, maturity being in conformity with original terms of purchase.

To James Lysol & Co.

136 Broadway N.Y.

Due 19

Date May 5 1919

Payable at Central Trust Co.

Location of Bank

Signature William Judson & Co.

ACCEPTED May 5 1919

Trade acceptances are written acknowledgments of debts for goods purchased. The seller, having sold a bill to his customer and price and terms having been agreed upon, makes an instrument in form as herein, and forwards to his buyer. The buyer accepts it by writing his name across, and indicating thereon his bank. The instrument is negotiable, and differs only from a promissory note in this: that a trade acceptance is a transaction in merchandise.

The holder of a trade acceptance may use it to obtain credit or use it as collateral, or discount at his bank. The bank may rediscount it at the Federal Reserve Bank. To use it there, however, maturity must not be greater than ninety days. An exception is made if the proceeds are to be used in agricultural pursuits, when the maturing period is six months from date of rediscount.

ARTICLE IV.

PROTEST.

Sec. 152. In What Cases Protest Necessary. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not been previously dishonored by non-acceptance, is dishonored by non-payment, it must be duly presented for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. Cf. sec. 118.

See Wisconsin Laws 1906, ch. 78, secs. 1681-9.

Sec. 153. Protest, How Made. The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

1. The time and place of presentment;

2. The fact that presentment was made and the manner thereof;

3. The cause or reason for protesting the bill;

4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

Sec. 154. Protest; by Whom Made. Protest may be made by:

1. A notary public; or

2. By any respectable resident of the place where the bill is dishonored in the presence of two or more credible witnesses.

Sec. 155. Protest; When to be Made. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Sec. 156. Protest; Where Made. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some persons other than the drawee, has been dishonored by non-acceptance, it must be protested for non-

payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

Sec. 157. **Protest Both for Non-Acceptance and Non-Payment.** A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

Sec. 158. **Protest Before Maturity Where Acceptor Insolvent.** Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Sec. 159. **When Protest Dispensed With.** Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Sec. 160. **Protest Where Bill is Lost.** Where bill is lost destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

ARTICLE V.

ACCEPTANCE FOR HONOR.

Sec. 161. **When Bill May be Accepted for Honor.** Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a person already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

Sec. 162. **Acceptance for Honor; How Made.** An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

Sec. 163. **When Deemed to be an Acceptance for Honor of the Drawer.** Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Sec. 164. **Liability of Acceptor for Honor.** The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

Sec. 165. **Agreement of Acceptor for Honor.** The acceptor for honor by such acceptance engages that he will on due presentation pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor been given to him.

Sec. 166. **Maturity of Bill Payable After Sight; Accepted for Honor.** Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

Sec. 167. **Protest of Bill Accepted for Honor or Containing a Reference in Case of Need.** Where a dishonorod bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

Sec. 168. **Presentment for Payment to Acceptor for Honor; How Made.** Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following the maturity;

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 104.

Sec. 169. **When Delay in Making Presentment is Excused.** The provisions of section 81 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

Sec. 170. **Dishonor of Bill by Acceptor for Honor.** When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him.

ARTICLE VI.

PAYMENT FOR HONOR.

Sec. 171. **Who May Make Payment for Honor.** Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

Sec. 172. **Payment for Honor; How Made.** The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension of it.

Sec. 173. **Declaration Before Payment for Honor.** The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Sec. 174. **Preference of Parties Offering to Pay for Honor.** Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference..

Sec. 175. **Effect on Subsequent Parties Where Bill is Paid for Honor.** Where a bill has been paid for honor all parties subsequent to the parties for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Sec. 176. **Where Holder Refuses to Receive Payment Supra Protest.** Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

Sec. 177. **Rights of Payer for Honor.** The payer for honor on payment to the holder the amount of the bill and the notarial expenses incident to its dishonor, is entitled to receive both the bill itself and the protest.

ARTICLE VII.

BILLS IN SETS.

Sec. 178. **Bill in Sets Constitute One Bill.** Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

Sec. 179. **Rights of Holder Where Different Parts are Negotiated.** Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Sec. 180. **Liability of a Holder Who Indorses Two or More Parts of a Set to Different Persons.** Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

Sec. 181. **Acceptance of Bills Drawn in Sets.** The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Sec. 182. **Payment by Acceptor of Bills Drawn in Sets.** When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Sec. 183. **Effect of Discharging One of a Set.** Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

TITLE III.

ARTICLE I.

PROMISSORY NOTES AND CHECKS.

Sec. 184. **Promissory Note Defined.** A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

Sec. 185. **Check Defined.** A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this Act applicable to a bill of exchange payable on demand apply to a check.

Sec. 186. **Within What Time a Check Must be Presented.** A check must be presented for payment within a reasonable time after the issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

See **Illinois** for text change, Rev. Stats. 1909, sec. 184.

Sec. 187. **Certification of Check; Effect of.** Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance.

Sec. 188. **Effect Where Holder of a Check Procures It to be Certified.** Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

Sec. 189. **When Check Operates as an Assignment.** A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

See **California** Laws 1905, ch. 258; **Michigan** Laws 1907, ch. 95; **Montana** Laws 1905, ch. 78; **New York** Laws 1904, ch. 287; **Oregon** Laws 1907, ch. 138; **Washington** Laws 1907, ch. 27; **Wisconsin** Laws 1915, ch. 262. Sec. 1676-24.

TITLE IV.

GENERAL PROVISIONS.

ARTICLE I.

Sec. 184. **Promissory Note Defined.** A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

Sec. 185. **Check Defined.** A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this Act applicable to a bill of exchange payable on demand apply to a check.

Sec. 186. **Within What Time a Check Must be Presented.** A check must be presented for payment within a reasonable time after the issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

See **Illinois** for text change, Rev. Stats. 1909, sec. 184.

Sec. 187. **Certification of Check; Effect of.** Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance.

Sec. 188. **Effect Where Holder of a Check Procures It to be Certified.** Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

Sec. 189. **When Check Operates as an Assignment.** A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

See **California** Laws 1905, ch. 258; **Michigan** Laws 1907, ch. 95; **Montana** Laws 1905, ch. 78; **New York** Laws 1904, ch. 287; **Oregon** Laws 1907, ch. 138; **Washington** Laws 1907, ch. 27; **Wisconsin** Laws 1915, ch. 262. Sec. 1676-24.

TITLE IV.

GENERAL PROVISIONS.

ARTICLE I.

Sec. 190. **Short Title.** This Act shall be known as the Negotiable Instruments Law.

Sec. 191. **Definitions and Meaning of Terms.** In this Act unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

Sec. 193. **Reasonable Time, What Constitutes.** In determining what is "reasonable time" or an "unreasonable time" regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

Sec. 194. **Time, How Computed; When Last Day Falls on Holiday.** Where the day or the last day for doing an act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

Sec. 195. **Application of Chapter.** The provisions of this act do nott apply to negotiable instruments made and delivered prior to the passage hereof.

Sec. 196. **Law Merchant, When Governs.** In any case not provided.

The following are Illustrations of Instruments Declared Irregular, Non-Negotiable, or Void, by the Highest Courts of the several States.

No. 114.

BILL OF LADING: WARRANTY.

Bank purchasing draft with bill of lading attached, held to warrant measure and quality of goods.

McMASTER'S COMMERCIAL DIGEST, PAGE 584A.

$1500- Oswego. N.Y. Oct° 5 1900

Fifteen days after date Pay to

the order of J.W. Clark & Co

Fifteen Hundred Dollars

Bill of Lading attached

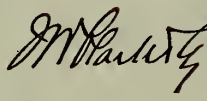
Value received and charge the same to account of

To Bell & White

No. New York

P. P. Pruch & Co

Received Oct 11 Bell & White



The courts of North Carolina and Texas hold that the bank that purchases this draft and collects it of Bell & White, warrants to the latter that the goods mentioned in the bill of lading are as contracted for in measure and quality.

McMASTER'S COMMERCIAL DIGEST
PAGES 584A; 188A;
6 SO. W. REP. 46.

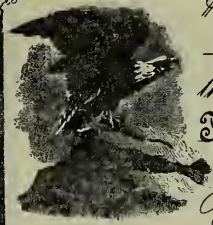
The courts of Iowa refuse to indorse this doctrine.

No. 115.

BILL OF LADING: TIME DRAFT: ACCEPTANCE: DELIVERY OF BILL OF LADING.

The rule here set forth applies to sight drafts in ...es where sight drafts are entitled to grace.

McMASTER'S COMMERCIAL DIGEST, PAGE 82 A.



$3700.00 Minneapolis, Minn. Jan'y 2, 1900.

At ten days sight Pay to

the order of Ourselves

Three thousand seven hundred Dollars

Bill of Lading attached

Value received and charge the same to account of

To: Zantzinger and Company

No. Baltimore, Md. M. N. Luttgen & Co

THE AMERICAN BANK NOTE CO.

McMaster's Commercial Digest, page 824.

WABASH RAILROAD COMPANY.

Received, subject to the classification in effect on the date of issue of this Bill of Lading, at *Minneapolis, Minn.* Station, *Jan. 1,* 1900, from *M. D. Luttgen & Co.* the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to said destination, &c., &c.

MARKS:	DESCRIPTION OF ARTICLES.	Weight—Subject to Correction.
XXX	*Flour.*	
Consignee *Zantsinger & Co.,*		
Baltimore. Md.		

Where the consignee is named as above, --being the same one as the person on whom the draft is drawn,--the Bill of Lading must be delivered, if demanded, on acceptance of draft.

If delivery is refused the collecting bank then becomes responsible for the payment of the draft.

NO. 116.

BILL OF LADING: TIME DRAFT: ACCEPTANCE: DELIVERY OF BILL OF LADING.

The rule here set forth applies to sight drafts in states where sight drafts are entitled to grace.

McMASTER'S COMMERCIAL DIGEST. PAGE 62 A

$3700.00 Minneapolis Minn Jan 2 1900.

At ten days sight Pay to the order of Ourselves

Three thousand seven hundred Dollars

Bill of Lading attached

Value received and charge the same to account of

M. Shuttgerts.

To Zantzinger and Company

No. Baltimore Md.

M. D. Luttgen.

WABASH RAILROAD COMPANY.

Received, subject to the classification in effect on the date of issue of this Bill of Lading, at *Minneapolis, Minn.* Station, *Jan. 1,* 1900, from *M. D. Luttgen & Co.* the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to said destination, &c., &c.

MARKS:	DESCRIPTION OF ARTICLES.	Weight—Subject to Correction.
XXX	*Flour.*	
Order of Consignee *M. O. Luttgen & Co.,* *Baltimore, Md.*	(Indorsed in blank on back "M. O. Luttgen & Co.")	

Where consignee is named as above--being the same person as the drawer of the draft--the Bill of Lading must not be delivered until payment of draft. If delivered on acceptance the collecting bank will become responsible for payment of draft.

This will be so even if consignor indorse the Bill of Lading in blank.

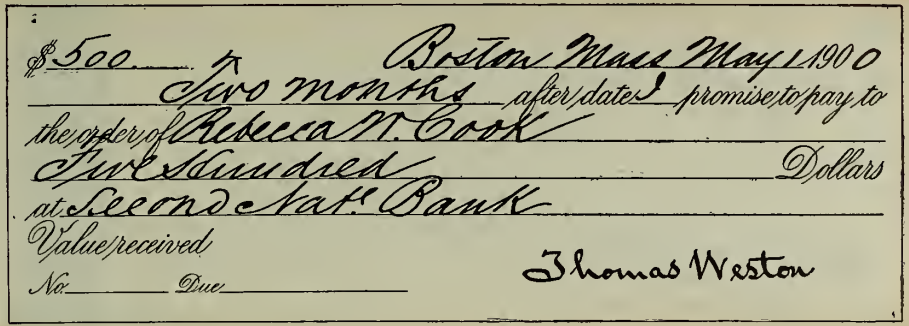
McMASTER'S COMMERCIAL DIGEST, PAGE 92A.
29 MINN. 363; 91 U. S. 92.

No. 117.

SUNDAY CONTRACT.

Note made and dated on Sunday, held to be collectible if the purchaser cashed check given that day, for it, but not presented for payment until a subsequent day.

McMASTER'S COMMERCIAL DIGEST,
PAGE 493A.
44 ATL. REP. 560.


$500. Boston Mass May 1 1900
Two months after date I promise to pay to
the order of Rebecca N. Cook
Five Hundred Dollars
at Second Nat'l Bank
Value received
No. Due
Thomas Weston

Rebecca W. Cook

Rebecca A. Cook discounted, on Sunday, a note made by one Weston. For the proceeds of the note she gave, on Sunday, but dated the next day, a check on a bank. The holder of the check indorsed it on Sunday but did not present it for payment and receive the money on it until the following Wednesday.

It was held that no action could be maintained on the note, but that the holder of the check was liable to Mrs. Cook for money had from her on Wednesday—the day he cashed the check. As to that part of the transaction the court said:

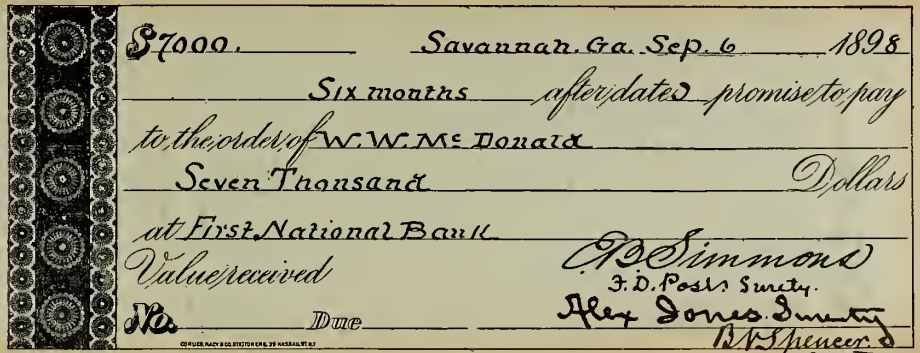
"The court properly held that there could be no recovery on the note, but the action for the money stands on different ground. As to it the contract was not complete or executed on Sunday. Its object on the part of the defendant was to obtain the money on the discounted notes before their maturity, and it was not carried out until the money was obtained. The check in the meantime was merely a part of the incomplete Sunday agreement, and as such either party could have refused to go further with it. But when the holder presented and the plaintiff paid it, both parties ratified and reaffirmed the transaction with all its consequences. This was done on a legal day, and made a legal and binding loan of the money. The weight of the authorities is to this effect. Daniel, Neg. Inst. § 69; Adams v. Gay, 19 Vt. 358. Contracts made on Sunday are not void in the sense that they do not admit of ratification, though, so long as they are executory, the law will refuse to enforce them. Chestnut v. Hargaugh, 78 Pa. St. 473. And acts of ratification will make them new contracts, which parties will be bound to perform. Uhler v. Applegate, 26 Pa. St. 140. It was accordingly held in the latter case that an agreement made on Sunday to extend the time of payment of a note in consideration of the anticipation of part of the amount became binding by the agreed prepayment on a legal day, Chief Justice Lewis saying: 'It is not the intention of the law that its regard for the Sabbath day shall be made the means of perpetrating a fraud.' So, in Whitmire v. Montgomery, 165 Pa. St. 253, 30 Atl. 1016, a note made and delivered on Sunday was held to be ratified and made good by a subsequent payment of interest on it."

No. 118.

SURETY: CUARANTY.

Any security given by the principal to one of eral sureties, is for the benefit of all. It is beyond the power of the debtor or one cred- r to change tbls rule.

McMASTER'S COMMERCIAL DIGEST, PAGE 186 A: 46 S. W. REP. 281



$7000. Savannah. Ga. Sep. 6 1898

Six months after date I promise to pay to the order of W. W. Mc Donald

Seven Thousand Dollars

at First National Bank

Value received

No. Due

D D Simmons

J. D. Poss's Surety.

Alex Jones. Surety

B. N. Spencer. Surety

COMSTOCK, RACH & CO. STOTTLER & CO. 29 NASSAU ST. N.Y.

W. W. McDonald

Simmons, the principal to this note, desiring to secure Spencer against any loss by reason of signing it, gave him, subsequent to the time when became surety, a mortgage sufficient to cover one-third of the total amount. This security would inure to the benefit of ALL the sureties alike.

"It is a well settled principle of equity that, if one of several co-sureties SUBSEQUENTLY takes security from the principal for his own indemnity, it inures to the common benefit of all sureties. Glasscock v. Hamilton, 62 Tex. 143; Brandt, Sur. § 268; Hall v. Cushman, 16 N. H. 462, 43 Am. Dec. 562, and note discussing the subject on page 563. In this note it is said the reason for the rule is that 'sureties are bound to observe good faith towards each other, and, when funds are placed by the principal in the hands of one surety to be applied either to the payment of the debt or for the purpose of indemnifying him against any loss that may arise from the suretyship, he must be considered as holding them for the common benefit of all concerned. The giving of the funds was the act of the principal, who is equally bound to indemnify all the sureties alike; and upon him, as well as to all his means for that purpose, each of them had an equal and just claim. It is unjust and inequitable that one surety, without the consent of his co-sureties, should derive any exclusive benefit from the amount of the principal in giving up what he might and ought to have applied for the common benefit of all. Where one surety stipulates for a separate indemnity, such indemnity is reached by his co-surety upon the ground either that it was intended for the benefit of all, or that the taking it was a fraud upon the others. In such cases courts of equity convert him into a trustee, not permitting him to allege his own turpitude or selfishness as a protection; for they enter into the agreement under a belief of perfect equality, trusting apparently to the same laws of indemnity, and to the united exertions of each other to avoid harm severally. Therefore for one to take a separate indemnity is fraud upon the rest, and more especially as it lessens the ability of the principal to indemnify the others; and, if taken without such secrecy, it is presumed to be designed for the benefit of all. It makes no difference how he acquires the fund. If he has a right to retain it, he cannot claim the whole benefit, but must share it with his co-sureties.' The rule stated, as well as the principles upon which it is founded, is as well established as any other in equity jurisprudence, and no further citation of authorities to support it is deemed necessary."

McMASTER'S COMMERCIAL DIGEST, PAGE 188 A; 46 S. W. REP. 291.

No. 119.

CHECK MADE BY INSANE DEPOSITOR.

Check made by insane depositors said to be void the option of the insane person's estate, even bank could not have known of the insanity.

McMASTER'S COMMERCIAL DIGEST, PAGE 113A; 19 S. E. REP. 182; 49 MICH. 192; 53 ME. 451

No. 94 Bangor Me. Apr. 2 1900

Northern National Bank

Pay to the order of F. I. Parsons.

Seventeen Hundred Dollars.

$1700

Lawrence Chalmers.
Administrator of Estate of Jas Bell.

P. L. Parsons

Lawrence Chalmers was insane when this check was drawn, although that fact was not known to the bank that paid it, and the bank had to make the account good to the estate of Bell.

McMASTER'S COMMERCIAL DIGEST
PAGE 118A:
53 ME. 451.

While there is a conflict in the authorities as to the effect to be given to a contract made by insane persons, it may now be regarded as a general rule of universal law that the contracts of a lunatic, idiot, or other person *non compos mentis*, from age or other infirmity, are utterly void." 1 Daniel, Neg. Inst. (4th ed.) § 209; Rogers v. Blackwell, 49 Mich. 192; Dexter v. Hall, 15 Wall. 9; Seaver v. Phelps, 11 Pick. 304; Bank v. Ames, 27 Fed. 727.

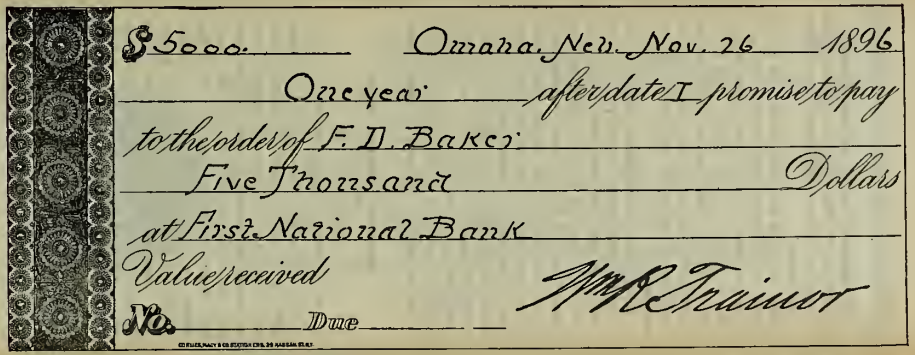
"And 'the mere circumstance that, for the time being, he so deported himself as to conceal his lunacy or imbecility, cannot alter his right to be protected against his own misfortune. And, though honest persons may be ignorant of his condition, that is their misfortune, and they should not be allowed to throw it upon one already helpless.' 1 Daniel, Neg. Inst. § 210. 'The right of avoiding a contract exists notwithstanding the person with whom the insane man contracted was not apprised of and had no reason to suspect the existence of such insanity, and did not overreach him by any fraud or deception.' Hovey v. Hobson, 53 Me. 451, 453."

No. 120.

INDORSEMENT: ASSIGNMENT.

Assignment on separate piece of paper no
uivalent to assignment by indorsement.

McMASTER'S COMMERCIAL DIGEST,
PAGE 554 A


$5000. Omaha, Neb. Nov. 26 1896

One year after date I promise to pay

to the order of F. D. Baker

Five Thousand Dollars

at First National Bank

Value received

No. Due

Wm R Traynor

An assignment of a negotiable note on a separate paper does not constitute the holder a bona-fide holder so as to cut off the defences of the maker.

The payee of this note transferred it to a bank as collateral. The transfer was on a separate piece of paper; the payee did not indorse the note. This left it open to the defences of the maker against the payee, and as the maker signed the note for the accommodation of the payee, the bank could not enforce it.

A *subsequent* indorsement by the payee, although made before maturity of the note would, *possibly*, not have helped the bank, unless it closed the old transaction and took the note a second time from the payee under a new consideration, it is certain that a subsequent indorsement does not relate back to the time of the original transaction. The Negotiable Instrument's Law provides that the negotiation of the instrument, so far as the offsets and defences of the maker are concerned, shall be deemed as taking place at the date when the proper indorsement is actually made.

McMASTER'S COMMERCIAL DIGEST,
PAGE 574 A;
60 PAC. REP. 933

The following quotation is from 60 Pac. 414.

"The note in suit was transferred by Crippen, Lawrence & Co. to plaintiff by separate assignment, and not by indorsement. Thus the plaintiff stands in the same position as his assignors, and can only assert such rights as they would have if here. Central Trust Co. v. First Nat. Bank, 101 U. S. 58, 25 L. Ed. 876; Hale v. Hitchcock, (Kan. App.) 44 Pac. 446; 2 Rand Com. Paper, §§ 788, 789; 3 Rand Com. Paper, §§ 1655, 1877; 1 Daniel, Neg. Inst., §§ 664, 741. The subsequent indorsement after maturity will not relate back to cut off defenses. Bank v. Taylor, 100 Mass. 18; Haskell v. Mitchell, 53 Me. 468."

NO. 121.

GUARANTY OF COLLECTION:
DUTY OF CREDITOR.

McMASTER'S COMMERCIAL DIGEST
PAGE 560 A

$4,300.00

New London, Conn. April 4, 1895.

Three months after date we promise to pay to the order of Ourselves

Four thousand three hundred ——— Dollars

at First National Bank

Value received London Furniture Comp'y

No. ——— Due ———

By ——— W. Ellis ———

Prest.

CRANE & BOND — John Polhemus, Printing Company 121 Fulton St. N.Y.

London Furniture Co
By M. Ellis. Pres't.

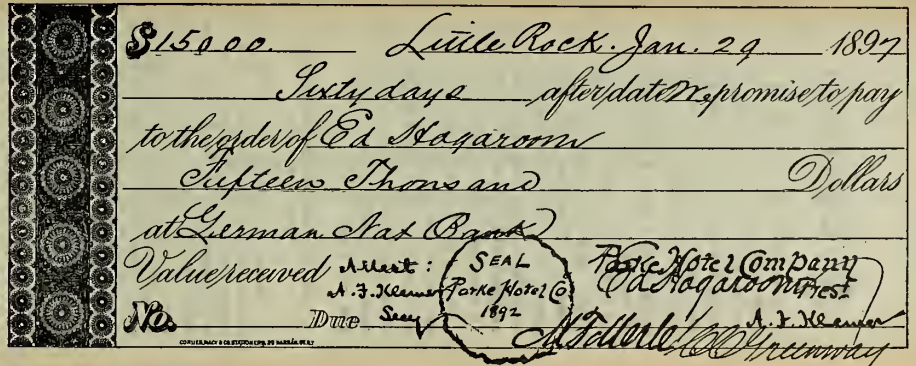
For value received
I hereby guaranty
the collection of
this note
F. W. Schulz.

The holder of this note had as security a real estate mortgage turned over by the Furniture Co., which, on the non-payment of the note, he proceeded to foreclose, selling the property under the foreclosure in about two years. No other action was begun against the Furniture Co. until after a deficiency arose on the foreclosure sale. The court held that the guarantor was released. A guarantor of collection is entitled to have the holder of the note pursue the maker by personal suit--promptly. Selling collateral is not enough.

McMASTER'S COMMERCIAL DIGEST,
PAGE 560A;
U. S. A. 7TH CIR., MARCH 22, 1900

No. 122.

CORPORATION: OFFICERS POWER TO MAKE NOTE.


$1500.00 Little Rock, Jan. 29 1897

Sixty days after date We promise to pay to the order of Ed Nagaroom

Fifteen Thousand Dollars

at German Nat Bank

Value received Attest: A. J. Werner

SEAL Parke Hotel Co. 1892

Parke Hotel Company

Ed Nagaroom Pres.

No. Due

A. J. Werner

A. Fallerton Greenway

This note is signed by the duly elected and acting president of the Parke Hotel Co. and is attested by the secretary and is accompanied by the seal of the company, and it also bears the signature of three of the directors; but as no specific authority was given any of them, by the by-laws or otherwise, to make notes for the company, the bank that discounted the note in good faith could not enforce it against the company.

The creditor is bound to inquire as to the authority of officers of a corporation to make its note. Such authority does not come by virtue of the office.

165 A. VOL. 1, McMASTER'S REVERSED CASES; 61 SO. W. REP. 572.

"It is elementary law that the president and secretary of a corporation, as such, have no power to bind the corporation by the execution of promissory notes or other contracts, but such authority 'must be derived from some by-law of the corporation, or some special order, or must be implied by some acquiescence or ratification on the part of the corporation, whose powers, under our law, are exercised by the directors.'"

60 PA. 14; 6 OR. 125; 113 CAL. 221; 22 ABB. 675; 109 N. Y. 612; 1 N. J. EQ. 641.

No. 123.

NON-NEGOTIABLE NOTE.

Note not yet due—but which belonged to a set of which was past due—was held to be taken subject to the offsets and defences of the maker.

McMASTER'S COMMERCIAL DIGEST, PAGE 74A; 42 S. W. REP. 1055.

$947.70 Houston Texas. November 28. 1900.

Three years after date I promise to pay to the order of Lasting Samuel and Rosenthal Nine hundred forty-seven and 70/100 Dollars at This is one of five notes given in payment of land Value received

No. Due

Jno R Harrington

Leeting v. Samuel & Rosenthal

This note was tranferred before maturity to one who knew that one of the five notes mentioned on its face was past due, and it was held that the purchaser took it subject to the offsets and defences of the maker.

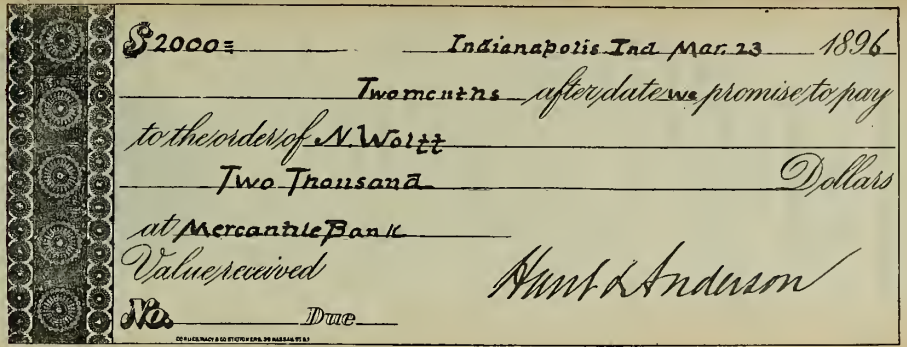
McMASTER'S COMMERCIAL DIGEST, PAGE 74 A; 42 S. W. REP. 1086.

This decision is on the same theory as that applied to a note not yet due but on which an instalment of interest is due and unpaid,--such note is generally held to be taken as a non-negotiable instrument.

No. 124.

BILITY OF MAKER AND INDORSER AS AFFECTED BY PLACE OF PAYMENT OR PLACE WHERE INDORSED.

McMASTER'S COMMERCIAL DIGEST PAGE 20 A.



A. Wolff
Indianapolis
Ind.
B & T Thomas
9 Murray St
New York

This note was made and put in circulation in Indiana where the makers and the first indorser resided. The makers liability is governed by the laws of New York, as the note is payable there.

Wolff's liability is governed by the law of Indiana, as the law of the place where a note is made and indorsed and put in circulation governs the indorsers liability.

As to the makers and Thomas, the New York indorser, the bank could wait for 6 years, but as to Wolff they would have to move on the note without delay.

McMASTER'S COMMERCIAL DIGEST, PAGE 20 A; 15 IND. 33; 19 N. Y. 436.

"In the case of a note made in one State and payable in another, it is clear, by all the authorities, that the maker will be held liable according to the law of the place where it is payable; as that is the place where his contract is to be performed, and he is presumed to have contracted with reference to the law of that place. Cox & Dick v. The United States, 6 Peters, 172.

"The authorities establishing the proposition, that the contract of indorsement in such case, is governed by the law of the place where made, and not by that of the place where the note is payable, are clear, and to our minds, satisfactory." 15 Ind. 33; 81 Ky. 636. 46 At. 567; 115 S. E. 812; 116 N. C. 882; 77 N. Y. 573; 84 Ga. 481; 82 N. W. 837.

No. 125.

ATTORNEY FEES.

In many states the provision in a note providing for the payment of attorney fees renders the note non-negotiable.

McMASTER'S COMMERCIAL DIGEST, PAGE 164 A.

$1100 =

Muncie Ind Sep 9 1897

One year after date we promise to pay to the order of James Webb

Eleven Hundred Dollars

at Citizens Bank, with interest and Attorneys fees

Value received

V. P. Gerrals
R. A. Martin

No. _____ Due _____

CRANE'S BOOK John Fallowtree Printing Company 121 Fulton St. N.Y.

James Webb, who was a resident of Maine, wrote his name on the back of this note and sent it to Indiana where it was sold. He was sued on it in Maine, in which State the provision for payment of attorneys' fees made the note non-negotiable, although in Indiana the rule is different. The court held that if Webb had indorsed the note in Indiana the Maine law as to the negotiability of the note would prevail, if the action was brought there.

McMASTER'S COMMERCIAL DIGEST, PAGE 164A; 40 AT. REP. 128.

In Indiana Webb would be held as indorser of this note; in Maine his writing his name on the back of the note would not bind him as indorser, as the note there was non-negotiable.

"It is urged that, because this is an Indiana contract, we must apply the doctrine of the Indiana court to it. We do not so understand the law. It is true that the *lex loci contractus* governs as to the validity and construction of the contract. But the *lex fori* governs as to all matters pertaining to the remedy. That law governs as to the negotiability of the contract, because upon it depends the question who has a right of action? 2 Mass. 90; 10 Pick. 53; 4 Metc. (Mass.) 597; 14 Gray, 485. 116 Mass. 534.

No. 126.

CERTIFICATE OF DEPOSIT: TWO PAYEES: DEATH OF ONE.

McMASTER'S COMMERCIAL DIGEST
PAGE 513A;
63 MD. 61

Certificate of Deposit

Second National Bank

Dover. Md Oct. 9. 1894

Samuel Stines has deposited in this Bank

_____ One thousand _____ Dollars.

payable to the order of himself or Ellen Stines on return of this certificate properly indorsed.

Wm Wales.

Cashier.

It was held that after the death of Samuel Stines that the bank could not lawfully pay this money to Ellen Stines.

A deposit made so that the real owner of the money can control it during life and the other party only have it after the death of the former, is ineffective as to the second party.

A form of certificate that would probably have given the money to Ellen Stines, is.

"Deposited by Samuel Stines and Ellen Stines, joint owners, payable to either before or after the death of the other."

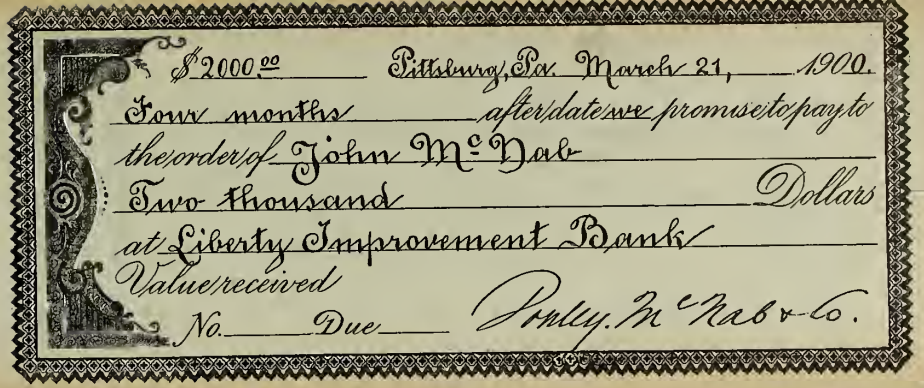
McMASTER'S COMMERCIAL DIGEST.
PAGE 513A

No. 127.

GUARANTY: PARTNERSHIP: INDORSEMENT.

Indorsement of firm note by one of the partners did to create no new liability on his part.

McMASTER'S COMMERCIAL DIGEST, PAGE 52 A; 40 OHIO 47.


$2000.00 Pittsburg, Pa. March 21, 1900.

Four months after date we promise to pay to the order of John McNab

Two thousand Dollars

at Liberty Improvement Bank

Value received

No. Due Donley, McNab & Co.

Jno McNab

T. B. Donley

Geo W Humbert

T. B. Donley was a member of the firm of Donley, McNab & Co., the makers of this note. The bank that discounted the note had a guaranty signed by three men for "any sums of money which T. B. Donley may owe to or become indebted to said bank upon bond, bill, note, check, draft, or any indebtedness of T. B. Donley to said bank."

It was held that this guaranty would not cover firm indebtedness of a firm of which Donley was member, and it was also held that Donley's personal indorsement of his firm's paper did not create any new or different liability from that already incurred when the firm's name was signed to the note as maker, hence the guaranty did not cover this note.

McMASTER'S COMMERCIAL DIGEST, PAGE 52 A. SEE ALSO 88 A; 40 OHIO 47.

NO. 128.

DEPOSIT:
RIGHT TO RESCIND CREDIT.

No. 2764

New York, February 9, 1903.

Ninth Ward Bank

Pay to the order of Frank H. Hoyt and Company

Two thousand five hundred Dollars

$2,500.00

R B Payne

McMASTER'S COMMERCIAL DIGEST.
PAGE 409 A.

CRANE'S BOND

The New York courts hold that if Work & Co. deposited this check in the bank on which it was drawn, and the credit was once made, the bank could not rescind the credit because the drawer's account was not good.

The California Courts hold that the bank could rescind the credit any time that day if it was made when the maker's account was not good.

Where the check is on another bank in the same place the crediting bank can rescind any time that day--if check is not paid.

McMASTER'S COMMERCIAL DIGEST
PAGE 409 A;
45 N. Y. 735.

No. 129.

SEAL.

A note formally issued under seal, held not to be negotiable instrument.

VOL. 1, McMASTER'S REVERSED CASES.
DEC NO. 513.

$5,000.00 Pittsburg, Pa. May 9 1900.

The Dover Railway Co.

Six months after date promise to pay to the order of Wm D. Frary Five thousand ~~~~~~~~~~ Dollars at Second National Bank

Value received.

This is one of twenty notes of $5000. each issued in pursuance of a resolution of the Board of Directors of The Dover Railway Co, May 7, 1900. In witness whereof the Dover Railway Co. has caused this note to be signed by its president and its secretary and its seal affixed hereto.

The Dover Railway Co
By. Wm H. Warner, Pres't.

No. Due

L.W. Blackson, Sec'y. SEAL

CRANE'S BOND

W. D. Fray
Ellsworth

A note--negotiable in form, but formally issued under seal,--as this one is--is a non-negotiable instrument, and one not a party to the instrument, who wrote his name on the back of it would not incur any liability.

The mere fact that the seal appeared on the paper would not necessarily make it non-negotiable, especially if there was no recital that the instrument was specially issued.

VOL. 1, McMASTER'S REVERSED CASES, DEC. NO. 513.

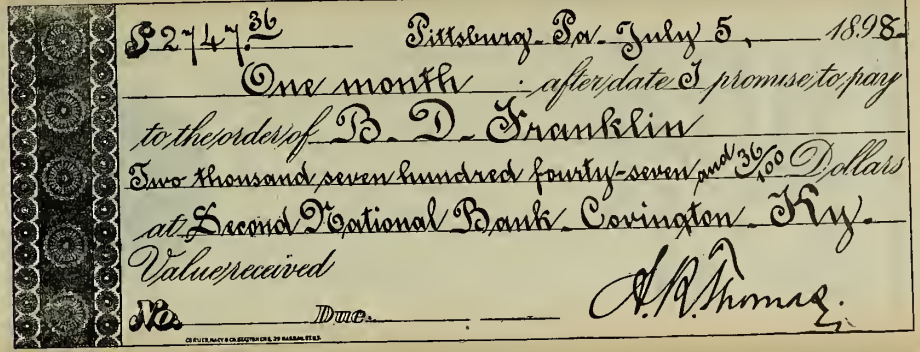
Bonds issued by railroad corporation have been held negotiable when properly worded (110 N. Y. 469); and if a seal appears thereon simply as part of the corporate signature and not for the purpose of creating a specialty, the presence of the seal might not destroy negotiability.

No. 130.

PROTEST: NOTICE.

Each indorser bound, *under common law rule*, ...see that prior indorser is notified of nonpayment; ...e creditor may only notify such indorsers as he ...hooses to hold.

McMASTER'S COMMERCIAL DIGEST, PAGE 378 A.


$27.47 36/100 Pittsburg Pa. July 5, 1898.

One month after date I promise to pay to the order of B. D. Franklin

Two thousand seven hundred fourty-seven and 36/100 Dollars

at Second National Bank, Covington, Ky.

Value received

No. Due. A. R. Thomas.

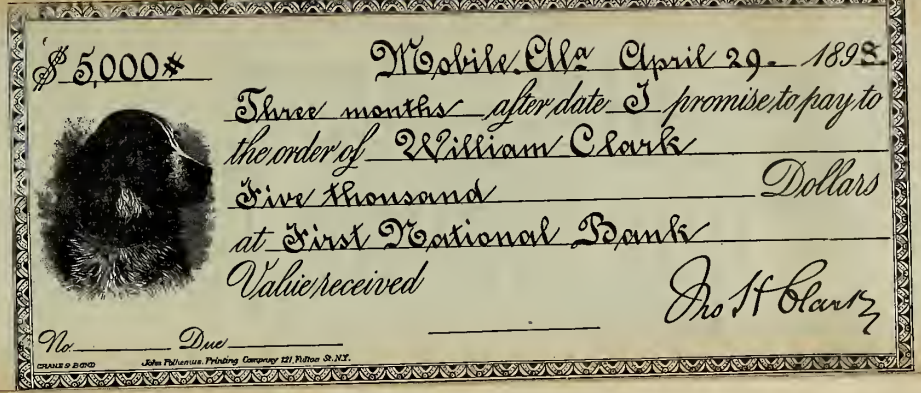
B D Frankeni
Oberlin. O.
Jno C Williams
Warren. Pa
Levi D Franklin
Pittsburg Pa

No. 131.

USURY: BANKS: ACCOMMODATION INDORSER.

some states the taking of more than lega. rest by a bank is held to entirely release accom- ation indorsers.

158 A, VOL. 1, McMASTER'S REVERSED CASES.
118 ALA. 441.


$5,000
Mobile, Ala April 29 1898
Three months after date I promise to pay to
the order of William Clark
Five Thousand Dollars
at First National Bank
Value received
Jno H Clark
No. Due
JOHN F. SLOAN
John Polhemus Printing Company 121 Fulton St. N.Y.

If a national bank discounted this note for the maker at more than the legal rate interest it would only be liable to the maker for twice the amount of the interest taken.

But the courts of Alabama hold that if the bank knew that Wm. Clark was an accommodation indorser that they could not collect anything of him,--the usury making the note non-negotiable --and thus allowing against the bank the same defences that Wm. Clark could set up if Jno. H. Clark had the note.

No. 132.

STRUMENTS PAYABLE "IN CURRENT FUNDS" NON-NEGOTIABLE.

McMASTER'S COMMERCIAL DIGEST, PAGE 522 A.

Certificate of Deposit

$1700

Northern National Bank

Delphos, Ind., May 1 1897

John Rogers has deposited in this Bank

Seventeen Hundred Dollars.

Payable in current funds to himself,

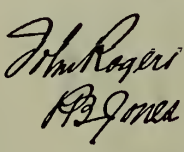
or order, on return of this certificate properly indorsed.

Wm Warner

Cashier

503

Kng



This instrument is not a negotiable instrument for the reason that it is payble "in current funds." In many States the indorsers would not be held,--they were not held in Pennsylvania.

44 PA. 464: 51 IND, 393; 62 TEX. 45;
76 N. C. 227;
McMASTER'S COMMERCIAL DIGEST,
PAGE 522 A

"These views, if correct, dispose of the case for the indorsement on this contract is in legal effect nothing more than an assignment of the beneficial interest in it. The law relative to the liability of indorsers of commercial paper is inapplicable to the parties to such contracts."

13 MINN. 90.

"We do not think it is negotiable as an inland bill of exchange. It lacks one of the essential qualities of a negotiable promissory note. It is not payable in money. It is payable in current funds. This takes from it the character of a negotiable promissory note."

51 IND. 393.

"The certificate of deposit therefore not being negotiable, the indorsement of the defendant could communicate no title to his indorsee."

76 N. C. 227.

NO. 133.

GUARANTY:
COLLATERAL: SURETY RELEASED.

Certain guaranty held to be personal and not assignable.

McMASTER'S COMMERCIAL DIGEST,
PAGE 96A,
93 N. Y. 273.

$15000 - Evansville, Ind. Jan. 27

One month after date Pay

Order of Indiana National Bank

Fifteen Thousand Do

Value received and charge the same to account of

To A. Feelstock.

No. 9 Beaver St. New York

Brigham & B

draft for Brig[illegible] following guaranty which was [illegible] the draft :

"New York, Dec. 29", 1897.

Messrs. BRIGHAM BROS.

GENTLEMEN:—

Any draft that you may draw on A. Feelstock of this city, we guarantee to be paid at maturity.

KAUFMAN & BLUM."

The draft was not paid and the bank sued Kaufman & Blum on the guaranty.

It was held to be a personal guaranty to Brigham Bros., and not assignable, and the bank could not recover on it.

M.-MASTER'S COMMERCIAL DIGEST, PAGE 96 A; 93 N. Y. 273.

"The true distinction between general and special guaranties, as contained in letters of credit, is that upon the faith of a *general* guaranty any person is entitled to advance money, or incur liability, upon complying with its terms, and can recover thereon the same as though specially named therein. (3 N. Y. 203.)

"In the case of a *special* guaranty, however, the liberty of accepting its terms is confined to the persons to whom it is addressed, and no cause of action can arise thereon, except by their action in complying with its conditions.

"It is always competent for a guarantor to limit his liability, either as to time, amount or parties, by the terms of his contract, and if any such limitation be disregarded by the party who claims under it the guarantor is not bound. It follows that no one can accept its propositions or acquire any advantage therefrom unless he is expressly referred to or necessarily embraced in the description of the persons to whom the offer of guaranty is addressed."

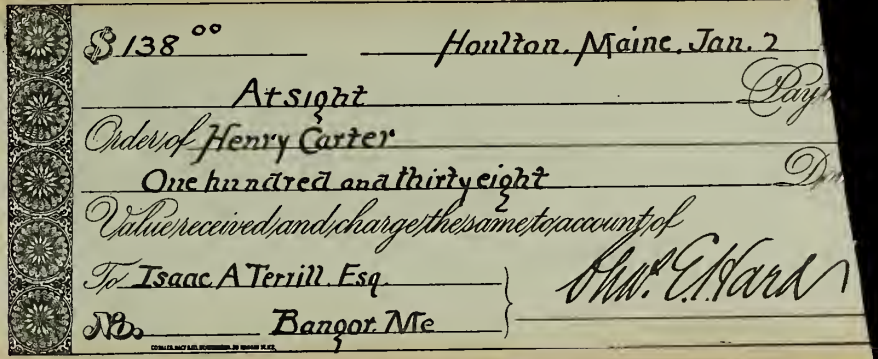
93 N. Y 273; 18 IOWA. 362; 12 MISS. 135.

No. 134.

OLEN NOTES: NEGOTIABILITY: TITLE.

(The Negotiable Instruments Law, sec. 91, seems provide that this instrument would have been d in the hands of a "holder in due course." N. Y. State Rep. 922.)

McMASTER'S REVERSED CASES, 131A, VOL. 2,



Henry

Charles E. Hard, an agent for Isaac A. Terrill, drew an order on Terrill and left it on his desk while he was momentarily absent from his office. The order was not then intended to be delivered to Carter and he was in no way entitled to it. Hard on his return to his office gathered up the loose papers on his desk and burned them, and he supposed that this order was thus destroyed, but it afterwards developed that Carter had stolen the order and sold it to an innocent purchaser who sued Terrill on it. It was conceded on the trial that the instrument, in law, was the negotiable note of Terrill in the hands of an innocent purchaser before maturity. It was held that the instrument could not be enforced.

The court said in part: "It is familiar law that one in possession of chattels by theft can convey no title to an innocent purchaser, but coin and bank bills are excepted from the rule. As to those, even if feloniously obtained, the holder can convey a good title to an innocent purchaser.

"To favor commerce, the law makes an exception also as to negotiable paper, and permits the *bona fide* indorser without notice to acquire title from a person who had none in himself. Where by fraud and without negligence one is induced to sign a promissory note under the representation and belief that it is a paper of another character, and delivers it to the payee, the innocent indorsee before maturity may recover of the maker.

"In the case before us, where the order had never been delivered, and therefore had no legal inception or existence as an order, the question is whether there is any liability upon it to an innocent indorsee for value. As is said in Burson v. Huntington, 21 Mich. 415, 4 Am. Rep. 497: 'The wrongful act of a thief or a trespasser may deprive the holder of his property in a note which has once become a note or property by delivery, and may transfer the title to an innocent purchaser for value. But a note *in the hands of a maker before delivery* is not property, nor the subject of ownership, as such. It is in law but a blank piece of paper.' That there must be delivery of the paper, either actually or constructively, is clear. Until then it has no existence as a contract. Bank v. Strank, 72 Ill. 559."

No. 135.

CONFLICT OF LAWS AS TO LIABILITY OF APPARENT MAKER OF NOTE: SURETY.

$5000 [illegible] Tuscumbia Ala May 1 1900

Four months after date we promise to pay to the order of E. P. Reynolds Jr.

Five Thousand _____ Dollars

at Union National Bank, Chicago, Illinois.

Value received

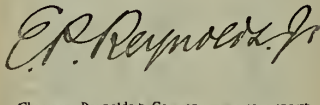
Chapman Reynolds & Co

W. P. Chapman

O. N. Howard

No. _____ Due _____

Elizabeth J. Chapman, Eeca Howard



Chapman, Reynolds & Company was a copartnership engaged in the building of a lock in the Tennessee river at Tuscumbia, Alabama.

This note was made to raise money for the firm Elizabeth J. Chapman, the wife of W. P. Chapman, signed the note in Alabama, as an accommodation for the benefit of her husband. The intention of her husband was to have the note discounted in Illinois and it was discounted there, and so far as he was concerned the note had no inception until it was so discounted,—as the payee made no advance on it. Elizabeth J. Chapman claimed to have no knowledge as to where the note was to be discounted. By the laws of Alabama a woman is not liable on any contract as surety for her husband, but in Illinois, where the note was discounted, and in New York, where the action was brought on the note, Mrs. Chapman would be liable.

The lower courts in New York held that the liability of Mrs. Chapman was governed by the laws of Illinois, and she was liable on the note. The court of last resort, by a divided court, held that her liability was under the laws of Alabama only, and she was released.

The court said in part:

It may not be profitable to here indulge in an extended discussion of the authorities, for we have found none that are exactly in point. We shall therefore extract from them some general principles which appear to be settled beyond controversy, and apply them to the question under consideration: (1) All matters bearing upon the execution, the interpretation, and the validity of contracts, including the capacity of the parties to contract thereto, are determined by the law of the place where the contract is made. (2) All matters connected with its performance, including presentation, notice, demand, etc., are regulated by the law of the place where the contract, by its terms, is to be performed. (3) All matters respecting the remedy to be pursued including the bringing of suits and the service of process, depend upon the law of the place where the action is brought. Scudder v. Bank, 91 U. S. 406, 2."

NO. 136.

REFERENCE ON NOTE TO MORTGAGE GIVEN TO SECURE IT: NON-NEGOTIABLE CLAUSES IN MORTGAGE HELD TO PREJUDICE NEGOTIABILITY OF NOTE.

$1963 66/100 Woodbridge, Cal. May 28 1900

One year — after date I promise to pay to the order of Wood Canal Co. —

Nineteen hundred, sixty three & 66/100 ——— Dollars

at First National Bank.

Value received This note is secured by mortgage of even date herewith

No. ——— Due ———

Graham Weaver

50 A, VOL. 2, McMASTER 9 REVERSED CASES.

Wood Canal Co.
N. W. Wood. Ass.

This note was held by an innocent purchaser. The maker had a perfect defence to it if it had been held by the payee, but this defence could not be made available if the note was a negotiable instrument, as the holder bought it for value before maturity. The words "this note is secured by mortgage of even date herewith" did not make the note non-negotiable on its face, but it was held that if by reference to the mortgage it contained words making the amount of the note uncertain then note was non-negotiable. The mortgage contained a provision for the payment of attorney's fees in case of non-payment of the note. This provision is repugnant to negotiability in California — and the note was held to be non-negotiable.

65 PAC. 1111; SEE 65 PAC. 417. AND McMASTER'S REVERSED CASES, VOL. 2, PAGES 50 A, 55 A.

"Being inseparably connected with the mortgage, and affected by the conditions contained therein, the note is not negotiable, within the law merchant or Civil Code. Kent, under the head of 'The Essential Qualities of Negotiable Paper,' says that, to constitute a negotiable note or bill, 'it is essential that it carry with it a personal credit given to the drawer or indorser, and that it be not confined to credit upon any future or contingent event.' 3 Kent. Comm. 'A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment.' Civ. Code. § 3088. 'A negotiable instrument must not contain any other contract than such as is specified in this article.' Civ. Code, § 3093. In Adams v. Seaman, 82 Cal. 636, 23 Pac. 53, 7 L. R. A. 224, in commenting upon these provisions of the Civil Code, it is said, 'An instrument is not negotiable if it have "any condition not certain of fulfillment."' And it was held that a provision for the payment of an attorney's fee in case of foreclosure was a contingency rendering the note non-negotiable. The assignment and transfer of the note and mortgage in question, therefore, was without prejudice to any set-off or other defense existing in favor of the defendants Weber, the same as though there had been no assignment, and the action had been brought by the company to whom they were given."

65 PAC. 1111.
50 A, VOL. 2, McMASTER'S REVERSED CASES.

The California Civil Code has been amended — section 3088 reads as follows: "A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment, except that it may provide for the payment of attorneys' fees and costs of suit, in case suit be brought thereon to compel payment thereof." This went into effect May 10, 1905.

No. 137.

ATTACHING COLLATERAL HELD IN PLEDGE—WAIVER OF PLEDGE.

$4646 37/100 Little Rock, Ark., April 1, 1900

January 3, 1901, after date we promise to pay to the order of Amelia Breckfelder

Forty six hundred forty six 37/100 Dollars

at Bank of Little Rock

Value received Rosenfeld & Miller

No. _____ Due _____

14A. VOL. 2, McMASTER'S REVERSED CASES.

James J. Nasn. of Perth Amboy (the plaintiff), drew this negotiable draft to the order of the Middlesex County Bank on a resident of Red Bank, and delivered the draft to the payee bank, which bank indorsed it to the order of the Second National Bank of Red Bank, (the defendant), and forwarded it to the latter bank for collection. The draft was paid July 14th. Prior to the time of the payment of the draft the Middlesex County Bank had not given Nash any credit for the draft, it having been left for collection only, and the Second National Bank of Red Bank did not credit the draft to the Middlesex County Bank on its receipt although the latter bank owed the former a balance on open account. After the payment of the draft the amount was credited by the Red Bank bank to the account of the Middlesex County Bank, but that day, and before the credit was made, the Middlesex County Bank failed and closed its doors.

Nash, the drawer of the draft, sued the Red Bank bank for the amount of the draft and recovered. The court said that if the Red Bank bank had credited the draft, on its receipt, to the Middlesex County Bank, it could have held the amount.

The opinion reads in part:

"If the defendant, when the draft was received, had accepted it as its own, by applying it to the subsisting indebtedness of the Middlesex County Bank, its title would have been good against the plaintiff (Bank v. Loyd, 90 N. Y. 530; Hoffman v. Bank, 46 N. J. Law. 604), for on its face it was a negotiable instrument, and in this State the payment of a precedent debt is a valid consideration for the transfer of such instruments. But the defendant never accepted title to the draft, and when it collected the draft it did so as a mere agent. The question therefore arises, to whom did it then become accountable for the proceeds. It is a reasonable inference that the act of the plaintiff in selecting the Middlesex County Bank as his agent to collect the draft was induced by the expectation that it would continue to transact banking business, so that such continuance was an implied condition of the continuance of the agency; and when that business was abandoned by the closing of the bank's doors on July 13th the agency was terminated. Manufacturers' Nat. Bank v. Continental Bank. 148 Mass. 553; 20 N. E. 193; 2 L. R. A. 699; 12 Am. St. Rep. 598. The bank thereby renounced its agency, as it had power to do, subject to liability for injurious consequences. Story, Ag. § 478. It was no longer entitled to stand as intermediary between the defendant and plaintiff, or to demand the proceeds of the draft or to control them for its own benefit. If those proceeds had been transmitted to it or to its receiver, the duty of the recipient would have been to forward them directly to the plaintiff. Bank v. Hubbell, 117 N.Y. 384; 22 N. E. 1031; 7 L. R. A. 852; 15 A. M. St. Rep. 515. These considerations make it clear that when the defendant received the proceeds of the draft, it received that which belonged wholly to the plaintiff, and in which the Middlesex County Bank had no right whatever. The law of commercial paper was no longer applicable to the circumstances. The case had become one in which the defendant's right was simply the right of a person who holds funds that belong to another."

NO. 139.

CASHIER'S CHECK: RIGHT OF ORIGINAL PAYEE TO STOP PAYMENT FOR FRAUD IN TRANSFER.

CASHIER'S CHECK.

No. 57 Morton Minn. Feb. 5 1900

State Bank

Pay to the order of John Drinkler

Two Hunared Dollars.

$200# Wm Morris Cashier

John Drinkler
v.
Wm. Maxwell

John Drinkler paid into the State bank $200, and received therefor a cashier's check for that amount.

Later in the same day he indorsed the check in blank and Maxwell, the proprietor of a gambling house, gave him a gambler's checks for it which were lost in the game run in the place. The next morning, and before the check was presented for payment, Drinkler notified the bank of the facts and told the teller not to pay the check, but it was soon after paid to the proprietor of the gambling house. Drinkler sued the bank and recovered the money.

The court said in part:

"A cashier's check, so called, differs radically from an ordinary check. The latter * * * is an order upon a bank purporting to be drawn upon a deposit of funds, for the payment of a certain sum of money to a person named, or to order or bearer, on demand. As between himself and the bank, the drawer of the check has the power of countermanding his order of payment at any time before the bank has paid it, or committed itself to pay it. When the check, however, is certified by the bank, the power of revocation by the drawer ceases, and the bank becomes the debtor. A cashier's check is of an entirely different nature. It is a bill of exchange, drawn by the bank upon itself, and is accepted by the act of issuance; and, of course, the right of countermand, as applied to ordinary checks, does not exist as to it."

* * * * * *

"The rule as to the payment and discharge of negotiable instruments is that payment of the bill or note must be made to the rightful holder or his authorized agent. "If the indorsement is for an illegal consideration, such as a gambling debt (and that is this case), payment made to the indorsee after notice of that fact will be of no avail as against the indorser;" citing Bank v. Spards, 8 Ill. App. 493 and Wheeler v. Winn, 38 Vt. 122. Under the above doctrine, which appeals to us as both just and sound, it is apparent that the defense of payment to Maxwell, the indorsee, — which is the only defense in the case, — turns entirely upon the question as to whether such payment was made in good faith, and without notice of the defect in Maxwell's title; for, as before stated, payment by the maker to a party who claims to be a *bona fide* holder is not sufficient to protect the maker against the claim of the real owner, when made after notice. Bainbridge v. City of Louisville, 83 Ky. 285; 4 Am. St. Rep. 153."

No. 140

CERTIFIED NOTE: MISTAKE: RIGHT TO CANCEL CERTIFICATION.

$304 30/100 New York Dec. 7. 1877.

Four months after date I promise to pay to the order of Wetherald and Young Three Hundred, Four x 30/100 Dollars at Irvington Bank

Value received.

No Due

Morris Wilson

Certified to be Irvington Bank Dec 10 1878

Irvington Bank

118 A, VOL. 2, McMASTER'S REVERSED CASES

John Drinkler
Wm Maxwell

John Drinkler paid into the State bank $200. and received therefor a cashier's check for that amount.

Later in the same day he indorsed the check in blank and Maxwell, the proprietor of a gambling house, gave him a gambler's checks for it which were lost in the game run in the place. The next morning, and before the check was presented for payment, Drinkler notified the bank of the facts and told the teller not to pay the check, but it was soon after paid to the proprietor of the gambling house. Drinkler sued the bank and recovered the money.

The court said in part:

"A cashier's check, so called, differs radically from an ordinary check. The latter * * * is an order upon a bank purporting to be drawn upon a deposit of funds, for the payment of a certain sum of money to a person named, or to order or bearer, on demand. As between himself and the bank, the drawer of the check has the power of countermanding his order of payment at any time before the bank has paid it, or committed itself to pay it. When the check, however, is certified by the bank, the power of revocation by the drawer ceases, and the bank becomes the debtor. A cashier's check is of an entirely different nature. It is a bill of exchange, drawn by the bank upon itself, and is accepted by the act of issuance; and, of course, the right of countermand, as applied to ordinary checks, does not exist as to it."

* * * * * *

"The rule as to the payment and discharge of negotiable instruments is that payment of the bill or note must be made to the rightful holder or his authorized agent. "If the indorsement is for an illegal consideration, such as a gambling debt (and that is this case), payment made to the indorsee after notice of that fact will be of no avail as against the indorser;" citing Bank v. Spards, 8 Ill. App. 493 and Wheeler v. Winn, 38 Vt. 122. Under the above doctrine, which appeals to us as both just and sound, it is apparent that the defense of payment to Maxwell, the indorsee, — which is the only defense in the case, — turns entirely upon the question as to whether such payment was made in good faith, and without notice of the defect in Maxwell's title; for, as before stated, payment by the maker to a party who claims to be a *bona fide* holder is not sufficient to protect the maker against the claim of the real owner, when made after notice. Bainbridge v. City of Louisville, 83 Ky. 285; 4 Am. St. Rep. 153."

No. 140

CERTIFIED NOTE: MISTAKE: RIGHT TO CANCEL CERTIFICATION.

$304 30/100 New York Dec. 7. 1877.

Four months after date I promise to pay to the order of Wetherald and Young Three Hundred, Four x 30/100 Dollars at Irvington Bank

Value received,

No Due

Morris Wilson

Certified Nov 10 78 Irvington Bank N.Y.

118 A, VOL. 2, McMASTER'S REVERSED CASES

The 17th Ward Bank held a note made by Morris Wilson payable at the Irvington Bank. On the day of the maturity of the note the 17th Ward Bank presented the note at the Irvington Bank and the teller of that bank certified it and charged the amount to the account of Wilson. Before the close of business that day the Irvington Bank discovered that the certification was made in error as Wilson had no funds to his credit, and this bank notified the 17th Ward Bank of the error and asked to have the certification erased and annulled but this was refused. On such refusal the Irvington Bank paid the amount of the note to the 17th Ward Bank and presenting the note which had been stamped paid, at its own counter, protested it for nonpayment. It was held that the indorsers of the note were properly charged. The judge writing the opinion said that the Irvington Bank could not have been held on its certification as it notified the 17th Ward Bank of the error in time for the latter bank to have protested the note and thus have saved itself from any loss by reason of the erroneous certification.

The opinion reads in part: "The making the note payable there, was a warrant from the maker to the bank to pay it from his funds and charge it to him. * * * In the present case the Irvington Bank discovered its error * * * in sufficient time to prevent any loss in consequence of that error. It immediately notified the 17th Ward Bank of the error and in time to enable it to make a representment if necessary, and to charge the indorsers. No damage therefore could accrue to the latter bank from the erroneous information. They were bound to accept and act upon the corrected information if there were time and opportunity so to do * * * the (Irvington Bank) might have stopped at that point and there would have been no liability on their part to the 17th Ward Bank."

GUARANTY.

Dobbios, who made this guaranty, and who lived
a distant city, died soon after signing it, and
r his death Jordan, Marsh & Co., who were
orant of his death, sold goods to Moore. It
s held that the guaranty could not be enforced,
ough no notice, as required in the guaranty,
been given Jordan, Marsh & Co.

McMASTER'S COMMERCIAL DIGEST,
PAGE 47 A.

For Value Received, the receipt whereof is hereby acknowledged, the undersigned does hereby guaranty to Jordan, Marsh & Co. the prompt payment by George E. Moore to Jordan, Marsh & Co., on maturity, of all sums of money and debts which he may hereafter owe Jordan, Marsh & Co. for merchandise, which they may from time to time sell to him, whether such debts be on book account, by note, draft or otherwise, and also any and all renewals of any such debt. The undersigned shall not be compelled to pay on this guaranty a sum exceeding $1,000, but this guaranty shall be a continuing guaranty, and apply to and be available to said Jordan, Marsh & Co., for all sales of merchandise they may make to said George E. Moore, *until written notice shall have been given by the undersigned to said Jordan, Marsh & Co. and received by them*, that it shall not apply at future purchases. Notice of the acceptance of this guaranty and of sales under the same, and demand upon said George E. Moore for payment, and notice to me of non-payment, is hereby waived.

Witness my hand, seal, this 20th day June, 1879.

WILLIAM DOBBINS. Seal.

GUARANTY.

Immediately after receiving this guaranty, Reid, M. & F. commenced selling goods to Mrs. Zuckerman, and the account continued to grow until Nov. 24, 1887, when she failed. No notice was given the guarantors of her defaults until 15 days after her failure. This lack of notice released the guarantors.

McMASTER'S COMMERCIAL DIGEST
PAGE 48 A.

Reid, Murdock & Fisher, Chicago.

Chicago, January 14, 1887.

For Value Received, I hereby guarantee the prompt payment at maturity of any indebtedness owing to Reid, Murdock & Fisher by Mrs. Mathilde Zuckerman, of 370 State Street and 214 and 216 North Clark Street, Chicago, for goods purchased, or which may be purchased hereafter of them, to the amount of fifteen hundred dollars ($1,500.00), with interest on all the above indebtedness, according to the tenor and effect thereof, at the rate of eight per cent. per annum, and I agree to pay all costs or expenses paid or incurred in collecting the same.

"Signed at Chicago, this 14th day of January, 1887.

"Witness: THOS. JOHNSON."

E. COHN.
WM. TAGGERT.

GUARANTY.

On the strength of this guaranty, Webb bought
000 worth of goods of Carson, Pirie, Scott &
, and did not pay for them. The guaranty
ld not be enforced. Neither the cashier or all
the directors could bind a bank as guarantor for
hird party.

McMASTER'S COMMERCIAL DIGEST,
PAGE 193 A.

Cherryvale, January 2nd, 1898.

CARSON, PIRIE, SCOTT & CO., Chicago, Ill.:

GENTLEMEN--We will guaranty the payment of any bill of goods which Mr. R. T. Webb may buy of you while in Chicago during the present week. If this guaranty is not specific enough we will make it satisfactory to you.

Yours very truly,

THE CHERRYVALE NATIONAL BANK,

B. W. WARD,
Cashier.

GUARANTY.

The E. P. Dodge Co. *sold* goods to Hilt after receiving this guaranty. The court held that the guaranty was to cover goods consigned,— not *sold*. The guarantor could not be held.

McMASTER'S COMMERCIAL DIGEST, PAGE 586 A.

In Consideration of goods, wares, and merchandise which may hereafter be *consigned*, *shipped*, and *delivered* by E. P. Dodge Mfg. Co. to George E. Hilt, of Dallas, Texas, as agent of the E. P. Dodge Mfg. Co., upon such terms as may be agreed upon between the said E. P. Dodge Mfg. Co. and the said Adam Schuab, do hereby guaranty that said George E. Hilt will hold and dispose of and account to said E. P. Dodge Mfg. Co. for all goods, wares, and merchandise as the said E. P. Dodge Mfg. Co. may hereafter *consign*, *ship and deliver* to and require of the said George E. Hilt to hold, dispose of, and account for within twelve months after date of this instrument in strict accordance with the terms and agreement which may be entered into and agreed upon between said E. P. Dodge Mfg. Co., of the value not to exceed, however, five hundred dollars, of all goods, wares, and merchandise that may hereafter be consigned, shipped and delivered, by said E. P. Dodge Mfg. Co. to the said George E. Hilt, to be held, disposed of, and accounted for to the said E. P. Dodge Mfg. Co. by the said George E. Hilt within twelve months after this date.

Dallas, Texas, Jan. 9, 1898. ADAM SCHUAB.

Surety released for the sole reason that the duties
a clerk who was employed as bookkeeper and
llector were also made to include that of cashier.

McMASTER'S COMMERCIAL DIGEST,
PAGE 489 A;
44 67 SEP 190.

The Supreme Court of Michigan say, in Action Against the Guarantor in this Case:

"MOORE, J. March 20, 1890, the plaintiff made a contract with defendant Rogers to sell him 'all the lager beer he may need in *car lots*, at five dollars per barrel, delivered on board of the cars at the city of Toledo, at the rate and price of five dollars per barrel.' Rogers, on his part, agreed to use his best endeavors to market the beer, 'and that he will pay for the beer so delivered, *in car lots*, by remittance or honoring and paying drafts drawn on him therefor, in such manner that he * * * shall not be indebted to said Grasser and Brand Brewing Company at any one time for more than the price of one lot or shipment; that is to say, that, upon making any order for beer, he will remit or honor and pay the sight draft drawn on him to the full amount of all indebtedness then existing.' Defendant *Doherty became surety for the performance of this contract on the part of Rogers*, limiting the amount for which he would be liable to $1,000. Two days after this contract was made, *one car load* of beer, consisting of 250 quarter barrels, was shipped to Rogers. This was the only car-load lot shipped. Other beer was shipped to Rogers *in smaller quantities* than car-load lots, as ordered by him. The value of all the beer shipped him was $910.50. He made remittances, which were credited upon his account, amounting to $517.14, leaving a balance due to plaintiff from Rogers of $393.36, for which amount the suit was brought. It was shown that, if beer was shipped in smaller quantities than car lots, the freight was proportionately much higher. Defendant Doherty claimed that he was liable only for the beer sold in car-load lots, and that, as the remittances would more than pay for the car load that was shipped, he was not liable. The judge sustained the defendant in both positions, and the guaranty was held worthless."

GUARANTY.

Guarantor of purchases of beer in car-load lots, held released for the reason that the beer was delivered in less than car-load lots.

McMASTER'S COMMERCIAL DIGEST, PAGE 55A; 70 N W REP 445

Rosanna E. Fish Signed a Bond, the Material Part of which reads as follows:

"WHEREAS, the above bounden Frank M. Scott, is about to act as *bookkeeper and collector* for the above-named Andrew H. Kellogg, and by reason thereof will have the control of sums of money, and be required to perform various acts: Now, the condition of this obligation is that if the above-bounden Frank M. Scott shall well and truly account for and pay over and dispose of all moneys and property of the said Andrew H. Kellogg which may come into his possession or under his control, and shall well and truly discharge and perform all his duties as *such bookkeeper and collector*, and if the said obligors, or either of them, shall pay over to the said Andrew H. Kellogg the sum and amount of any and all loss, damages, costs, and expenses suffered or incurred by the said Andrew H. Kellogg by reason of the failure of said Frank M. Scott to pay over and account for all moneys and property, or his failure to discharge and perform all his duties as aforesaid, within ten days after notice is given to the said Rosanna E. Fish of the sum and amount so to be paid, then this obligation to be void," etc.

Scott entered on his duties and soon after he was given the *additional duties of cashier*. He defaulted, but this bond could not be enforced on account of the addition to his duties.

GUARANTY.

Guaranty broadly drawn to cover any indebtedness of T., did not cover paper of firm of which T. was member, although paper was signed by T. in the firm name.

McMASTER'S COMMERCIAL DIGEST
PAGE 684;
121 N. Y. 280

John Thompson, a customer of the Bank of ———, was carrying on mercantile business in his own name. To secure the bank of ——— for any indebtedness they might have against him, he made a mortgage on real estate conditioned as follows:

"Provided always, and these presents are upon this express condition, that if the said Thompson, his heirs, executors or administrators shall and do well and truly pay or cause to be paid unto the said Bank of ——— or its assigns the just and full sum of all promissory notes, checks, or bills of exchange which have been or shall at any time hereafter be made, drawn, indorsed or accepted by the said Thompson and which have been or shall at any time be discounted by the said bank for his benefit, when and as the same shall become due and payable, and shall also pay upon demand any and all overdrafts made by him and all balances of account, and all sums of money which now are or shall at any time become due or owing by him to said bank *upon any account whatever*, this conveyance shall be void, otherwise to remain in full force and virtue. This mortgage being given and intended as a collateral and continuing security for the payment of such indebtedness to the amount of $75,000." Thompson continued to deal with the bank for some time. He then organized the firm of Thompson, Reynolds & Co., who kept their account at the same bank. The bank held paper of the firm signed by Thompson in the firm name, but it was decided that this mortgage would not cover it.

Certain guaranty given to a firm, held to be inoperative to succeeding partner.

McMASTER'S COMMERCIAL DIGEST
PAGE 360A.

The Fillmore County Bank was the depositary of the funds of Fillmore County, Minnesota, and, as such depositary, gave a bond for $10,000 with several sureties.

The bank failed to pay over all of the funds belonging to the county and the sureties were sued on the bond.

On the trial it was conclusively established that when the sureties executed and delivered the bond its condition was (stating it according to its legal effect) that the principals would pay interest on all public money deposited with them at the rate of 3 per cent. per annum upon the monthly balances of such deposits. But after the delivery of the bond by the sureties, and without their knowledge or consent, Todd, one of the principals, with the consent of the county commissioners, changed the condition of the bond so as to make the rate of interest *2 per cent.* per annum *instead of 3.* The sureties could not be held.

The court said in part:

"The plaintiff further claims that the alteration in the terms of the bond was not material because it reduced the rate of interest; hence it was not prejudicial to the sureties. It is unnecessary to inquire or speculate whether the alteration was prejudicial to the sureties or not, for the bond, after it was materially altered without their consent, was no longer their bond. Its identity was destroyed by the alteration. It is clear, upon principle and authority, that if a material alteration is made in a contract without the surety's consent he is discharged, *even if the alteration may have been for his benefit.*"

GUARANTY.

Extension of time of payment of judgment obtained on guaranteed note released guarantor although the guaranty allowed renewals of the notes guaranteed.

McMASTER'S COMMERCIAL DIGEST, PAGE 69A; 25 N. Y. 479

Daniel J. Townsend was indebted to Oliver, Lee & Co.'s Bank at Buffalo, and at the request of the bank the wife of Townsend executed a mortgage on property of hers, conditioned: —

"To pay or cause to be paid all checks, notes, drafts, overdrafts and acceptances, and all indebtedness of any kind whatsoever, which had theretofore or should thereafter be incurred by the said Townsend, or Buffalo Car Co., and which then were or might thereafter be held or owned by the bank, upon which the said Daniel J. Townsend or the said Buffalo Car Co. should be in any manner liable either directly or contingently, either as drawer, maker, indorser, acceptor or otherwise, whenever the same *or any renewals thereof* or any part thereof should fall due or become payable, with all costs and expenses thereof or in anywise connected therewith."

The bank afterwards obtained judgment on indebtedness which the mortgage was given to secure, against Townsend, in the sum of $87,000. After the recovery of the judgment the bank agreed *to extend the time of payment* of the debt to the first day of June next, and Townsend personally consented to the extension, but his wife was not asked to. It subsequently transpired that a portion of the land mortgaged was deeded to the wife. The mortgage as drawn was sufficient to bind her property as security for the debt, but the extension of time without her consent released it.

This decision negatives the idea that extension of time is equivalent to renewal, as the mortgage expressly provided that renewals could be made.

GUARANTY.

Certain guaranty of dividends held, as drawn, not to survive the benficiary.

McMASTER'S COMMERCIAL DIGEST, PAGE 555 A; 171 MASS. 125.

Chicago, January 1, 1886.

"We hereby guaranty the payment to Mr. William J. Rotch of a dividend of 6 per cent. per annum on stock subscribed to this day in the corporation of French, Potter & Wilson."

T. J. FRENCH.
WM. POTTER.
L. D. WILSON.

This guaranty was given to induce Rotch to take the above stock. The dividends were regularly paid until the death of Rotch, when they ceased. The executor of Rotch's estate then brought an action on the guaranty and succeeded in the lower court, but on appeal to the Supreme Judicial Court of Massachusetts it was decided that the guaranty was to be construed at the longest as running for a reasonable time, and that whether for a longer or a shorter time, it would in no event, as worded, survive the death of the beneficiary.

"The promise guaranties a payment 'to Mr. William J. Rotch,' personally, without mention of executors, administrators or assigns. It guaranties no more in terms. A promise to pay a like sum annually to Rotch or Seabury would be limited to payments during their lives."

If the guaranty was intended to have survived Rotch it should have run to him, "*his heirs, executors, administrators and assigns.*"

GUARANTY.

Guarantors released by *reducing* their liability in alteration of bond.

Anamosa, Iowa, May 25, 1894.

"I hereby agree to be security to Shaw & Schoonover for whatever sum of money they or may hereafter let my sons, Osborne Brothers, have to use in their business.

"DAVID OSBORNE."

Shaw & Schoonover, bankers, dissolved partnership some time after receiving this guaranty. Osborne Bros. then owed them $16,000. Schoonover succeeded to the banking business and continued the account with Osborne Bros. until they owed him $34,000, when they failed.

Schoonover sued David Osborne on his guaranty, seeking to charge him with the full debt of Osborne Bros., about $34,000, and he succeeded in his action in the lower courts. But on appeal it was held that the letter of the guaranty would not cover advances made by Schoonover after the withdrawal of his partner from the firm. As to the balance that was due at the time of the dissolution of the firm, $16,585.85, and which was fully covered by the guaranty, it was held to have been paid, in law, by the credits subsequently made to the account, although the subsequent debits to the account equalled or exceeded the subsequent credits; the rule being that in the absence of specific instructions as to the application of credits, the credits apply to and extinguish the oldest items in the account. The guaranty of David Osborne was held to be of no effect in the hands of Schoonover. The opinion discusses at length decisions in similar cases in the U. S. Supreme Court and in the courts of other States.

GUARANTY.

Guaranty of paper made "from date hereof"—(Jan. 17), did not cover paper made on that date.

McMASTER'S COMMERCIAL DIGEST, PAGE 88A; 45 NO. E. REP. 1083.

Peoria, Ill., January 17, 1893.

To the Peoria Savings, Loan and Trust Company:

"GENTLEMEN — We make this request and guaranty, to viz: That the Peoria Pump and Implement Co., of this city (incorporated), may from time to time, *from date hereof* until further notice, present to you its promissory notes and business paper for discount or advance, to the extent of $12,000.00. In case that it shall do so, we request to discount such notes or said paper indorsed by them, or to make such advance to them, and in consideration of the terms, and one dollar to us in hand paid by you, the receipt of which is hereby acknowledged, we hereby guarantee the prompt payment at maturity of the principal and interest of all promissory notes and business paper or open account made or indorsed by said Peoria Pump and Implement Co., and discounted or advanced upon you for said company; and we waive notice of the acceptance of this guarantee, and of any and all indebtedness at any time covered by same.

"Witness our hands and seals at Peoria, Illinois, the 17th day of January, 1893. "G. G. GEIGER. [SEAL]
"G. H. WYMOND. [SEAL]
"E. T. BRAWLEY. [SEAL]
"JOSEPH ELDER. [SEAL]"

On the date of this guaranty the Peoria Savings and Loan Co. discounted paper for the Peoria Pump and Implement Co. It was held that the guaranty would not cover this paper—but only paper made *after its date.*

GUARANTY; VOID BECAUSE GUARANTORS WERE NOT NOTIFIED OF ITS ACCEPTANCE.

The Drake Roofing Company, desiring to extend their credit at the German Savings Bank, and not wishing to be annoyed by furnishing indorsers from time to time, the secretary of the company proposed to the bank that the company furnish a written guaranty of several parties to the amount of $500, to which proposition the bank agreed, and thereafter the secretary deposited with the bank this guaranty. The company got behind at the bank but the guaranty could not be enforced as the bank had not notified the guarantors of its acceptance.

"For the purpose of inducing the German Savings Bank of Des Moines, Polk county, Iowa, to extend credit to the Drake Roofing Company, the undersigned, J. F. N. Drake, F. O. Drake, A. P. Cottrell and R. T. C. Lord, hereby guaranty to the said German Savings Bank payment of all notes, checks, drafts, overdrafts, and other evidences of indebtedness which may accrue from the said Drake Roofing Company to the said German Savings Bank, within six months from the date of this guaranty, not to exceed the sum of five hundred dollars, it being the intention of this contract to secure payment to the said German Savings Bank, and the undersigned hereby agree to pay to the said German Savings Bank all notes, checks, drafts, overdrafts, and other evidences of indebtedness from said Drake Roofing Company to said German Savings Bank, which may accrue within six months from the date hereof, not to exceed five hundred dollars, waiving demand, notice and protest on the part of the said German Savings Bank in collecting said sums from said Drake Roofing Company."

Des Moines, Oct. 2, 1895.

J. F. N. DRAKE. [SEAL]
F. O. DRAKE. [SEAL]
A. P. COTTRELL. [SEAL]
R. T. C. LORD. [SEAL]

GUARANTY—PERSONAL—NOT ASSIGNABLE.

54 McMASTER'S COMMERCIAL DIGEST;
61 N. Y. 40.

John W. Barnes agreed to furnish Edward F. Barrow flour to be sold on commission. John Barrow gave guaranty in writing that he would become responsible for such goods as went into E. F. Barrow's hands under this agreement. There was a default, and it appeared that the flour furnished was furnished by John W. Barnes & Co., a firm of which John W. Barnes was a member. The court held that John Barrow could not, for this reason, be held on his guaranty, and said in part: "In the Roman law, the rule now under consideration assumes the form of a maxim." "An agreement of guarantee made with one person cannot be extended to another person." Some of the English cases which turn upon this principle are: Lord Arlington v. Merricke (2 Saund., 414); Wright v. Russel (2 W. Black., 934); Myers v. Edge (7 T. R., 254); Barker v. Parker (Ibd. 287); Simson v. Cooke (1 Bing., 452); Shang v .Lee (3 East. 484); Spies v. Houston (4 Bligh [N. S.] 515); Dey v. Davy (10 Ad. & Ell., 30). The rules governing letters of credit depend upon the same doctrine. The whole subject is well illustrated by the case of Philip v. Melville (cited in Burge on Suretyship, p. 68). In that case, Melville recommended one Tells to Dusie for a supply of spirits, and guaranteeing the payment. Dusie wrote on the back of the letter of credit an assurance to C. & J Philip, plaintiffs, that, not having the article himself, he had sent Tells with the letter of credit, on which they might rely. They having furnished the spirits sued Melville. The Court held, that a letter of credit addressed to a particular person is limited to him, and that the writer must be held to have granted it in reliance on his prudence and discretion in acting upon it; that such a letter contains no general power to interpose the writer's credit, or transmit his guarantee; and this is specially to be observed where the general terms of the letter made the personal limitation the only restraint on the responsibility of the writer.

"In the case at bar the defendant agreed that Edward F. Barrow should account to John W. Barnes for goods received, and should sell on commission for him, and be accountable for the proceeds, after deducting commissions to be allowed him by Barnes. It is not possible on any principle of construction established by the commentators and the cases cited, to add to the name of John W. Barnes those of William and Charles Barnes, his copartners, it not being made to appear that the defendant knew, at the time of the execution of the contract, that it was entered into by John W. Barnes, not for himself merely, but also for his copartners."

GUARANTY—BUILDING CONTRACT.

A surety on a bond of a building contractor, conditioned to complete the building according to the contract, is not liable thereon where the provision in the building contract that the first three installments of the price were to be for only 75 per cent. of the value of the work done was violated by a payment on the third installment of a sum which was in excess of the 75 per cent. of the value of the work, more than the amount sued for.

"Reavis, J. Defendant Mackay entered into a building contract with Heilbron, now represented by the appellants as executors, for the sum of $1,545. Mackay agreed to furnish all labor and material necessary for the construction of a house, and to complete the same on or before December 22, 1893. The work was to be performed and finished under the direction and to the satisfaction of architects acting as agents of Heilbron, and the contract contained, among others, the following stipulation, with reference to the payment of the contractor, Mackay, viz.: That the whole amount should be paid in four installments, according to the progress of the building, and upon certificates of the architects, and all but the last payment to be to the amount of but 75 per cent. of the value of the work done and material furnished, as estimated by the certificate. At the time the contract was executed, Mackay, with Hinckley as surety, executed and delivered to Heilbron a bond for the faithful performance of the contract, which contained the following condition: 'If the said E. A. Mackay shall fulfill said contract according to the terms as therein set forth, and pay or cause to be paid all bills for material and labor in the construction of said building, then the above obligation to be void.'" * * * * * "It appears from the record that, after the payment of the first and second installments, the payments were made to the contractor in excess of the 75 per cent. estimate of the whole contract before the completion of the building,—an excess greater than the amount claimed here. The contract to build and the bond securing a faithful performance of the contract are to be read together; and, under the stipulation contained in the contract, but 75 per cent. of the amount earned should have been paid on the third installment, and none on the last installment, until the completion of the building, and production of evidence that all laborers and material men had been paid. The surety is released where the payments of the contractor are in excess of the amounts provided for under the contract. (Bragg v. Shain, 49 Cal. 131; Brennan v. Clark, [Neb.] 45 N. W. 472; Gray v. School Dist. [Neb.] 53 N. W. 377; Simonson v. Thori, [Minn.] 31 N. W. 861; Evans v. Graden, [Mo. Sup.] 28 S. W. 459; Board v. Branham, 57 Fed. 179; St. Mary's College v. Meagher, [Ky.] 11 S. W. 608.) The judgment of the Superior Court is affirmed."

GUARANTY—BUILDING CONTRACT.

"The facts in this case are as follows: The plaintiff, Michael Kelley, on the 28th day of April, 1894, entered into a contract with defendant, C. A. O'Neal, by which O'Neal, for the sum of $2,000, to be paid by Kelley, agreed to furnish materials and erect for said Kelley a two-story brick house in the city of Texarkana. The contract required that the building should be constructed according to specifications named therein, and that it should be completed and turned over to Kelley free of all liens on or before the 1st day of July, 1894. The defendants, C. C. Dorrian, H. Wolf, W. L. Snow and T. J. Wheeler, became sureties on the bond of O'Neal for the performance of such contract. O'Neal having failed to perform his contract, Kelley brought this action on his bond to recover the sum of $1,000 as damages suffered by him on account of such failure. The sureties set up that there had been a material alteration of the contract. On this point Kelley testified at the trial as follows: "The contract called for a building 96 feet long for lower story, and 75 feet long for upper story. After the Webber building had given away, I said to O'Neal: 'I wish the upper story of my building had been the same length as the lower story, because I was afraid we would have the same trouble they were having with the Webber building.' Mr. O'Neal said it would only take a little extra work, and would in no way affect the contract to make the change. I told him I did not want to do anything that would change the contract, and if it could be done so as not to change the contract, to figure it up, and say how much it would cost. He did so, and said it would cost me $25, and I gave him a check immediately. The only extra work was the ceiling, flooring and upper joists. The longitudinal walls were already there, and I estimated that $25 was a reasonable price for extra work, and therefore paid it." There was a judgment against the defendants for the sum of $500, from which they appealed."

The opinion reads in part: "The obligor and the obligee are bound to know that, if they find it convenient to change or vary the terms of the original contract, they must seek the assent of the surety, because it is his contract as well as theirs. And if they will not do so they take upon themselves the hazard, and thus loosen the bonds of the surety." (Hibbs v. Rue, 4 Pa. St. 348). Any material alteration in the terms of such a contract discharges the surety if he has not consented to the change; and this is so even if the alteration be for the benefit of the surety, for, although the principals may change their contract to suit their pleasure or convenience, they cannot thus bind the surety, and as the new contract abrogates the old, the surety is discharged from all liability unless he has consented to the alteration. (Warden v. Ryan, 37 Mo. App. 466; Judah v. Zimmerman, 22 Ind. 388; Simonson v. Grant, 36 Minn. 439, 31 N. W. 861; Bethune v. Dozier, 10 Ga. 235; 24 Am. & Eng. Enc. Law, 837; 2 Brandt, Sur., §§ 278, 288.)

The alteration of the contract shown in this case was material, and there is nothing to show that the sureties consented thereto. It required that O'Neal should erect a building of dimensions different from that required by the original contract, and for which he was to receive a different consideration.

The fact that Kelley refused to agree to the alteration until O'Neal, the contractor, had assured him that it would not affect the original contract is a matter of no moment; for O'Neal did not represent the sureties, and they are not bound by his opinion on a question of law. Nor does the fact that he afterwards failed to carry out the contract as altered affect the question. It is the execution of the new contract, and not the performance thereof, that discharges the sureties. There is no dispute about the facts of this case, and after considering same, we are of the opinion that the judgment of the Circuit Court against the sureties of O'Neal is not supported by the evidence. The judgment as to them is reversed, and the case is dismissed, but as to O'Neil it is affirmed."

GUARANTY—DEPARTURE FROM TERMS OF CONTRACT.

58SA; McMASTER'S COMMERCIAL DIGEST
54 SO. W. REP. 303.

Henry House entered into a written contract on July 11, 1895, with the firm of Bonnell, Matthews & Harding, for the performance by them, under the direction and to the satisfaction of the architects, acting as the agents of the owner, "of the work included in the erection, construction, and completion of one certain three-story brick building, ... agreeably to the drawings and specifications made by the said architects, ... including all labor and material incident thereto," for the price of $20,500, payable in specified installments. The contract, among other things, provided:

"3rd. Should any alteration be required in the work as shown or described by the drawings or specifications, a fair and reasonable valuation of the work added or omitted shall be made by the architects, and the sum herein agreed to be paid for the work according to the original specifications shall be increased or diminished, as the case may be. . . . . ."

The contractors gave a bond with sureties for their performance of the contract. The bond given by the contractors, with defendant as surety, bore date August 6, 1895, and was conditioned in the usual way for the faithful performance by the contractors of their undertaking. By supplemental agreement between the owner and contractors, bearing date October 16, 1895, which was indorsed on the original, it was provided that the contractors should put a fourth story on the building for the additional "sum of $4,500, in accordance with the third clause of this agreement;" the contractors to have additional time of thirty days to complete the building.

In a suit against the sureties they were held released; the court said in part:

"We affirm the judgment of the court below upon the ground that the supplemental agreement of Henry House with the contractors, Bonnell, Matthews & Harding, for the addition of a fourth story to the building, was not contemplated by the third paragraph of the contract, and was a material alteration thereof. In so far as this was a question of fact, we approve the implied finding of the court below. The identity of the work was changed. Miller-Jones Furniture Co. v. Ft. Smith Ice & Cold-Storage Co., (Ark.) 50 S. W. 508.

GUARANTOR—DEATH—EXTENSION OF TIME OF PAYMENT.

50 A; McMASTER'S COMMERCIAL DIGEST;

16 R. t. 148.

S. P. Carpenter gave a guaranty under seal to the Eagle Bank by which he agreed to become responsible to the bank for any paper of his son which the bank might discount or purchase. The guarantee provided that it should be binding until Carpenter notified the bank in writing of its termination, and that the bank could extend time of payment or renew any of the paper and that the guaranty should cover such renewals.

Carpenter died, and after his death the bank renewed one of such notes. The court said the guaranty could not be held on the original note or the renewal. Death terminated the guaranty so far as any future transactions were concerned, and the extension of time of the original note released the guaranty as to it, as death would also terminate any right to make new extensions.

The court said, in this case: "Guaranties have been divided into two classes; one where the consideration is entire, that is, where it passes wholly at one time; the other, where it passes at different times, and is, therefore, separable or divisible. The former are not revocable by the guarantor, and are not terminated by his death and notice of that fact. 8 Me. 14; 18 Ala. 458; 40 Iowa, 469; 113 Ill. 390. The latter, on the contrary, may be revoked as to subsequent transactions by the guarantor, upon notice to that effect, and are determined by his death and notice of that event.

"The distinction between these two classes of guarantees is well illustrated by Lush, Lord Justice, in Lloyd's v. Harper, L. R., 16 Ch. Div. 290, 319. 'An instance of the first,' he remarks, 'is where a person enters into a guaranty that, in consideration of the lessor granting a lease to a third person, he will be answerable for the performance of the covenants. The moment the lease is granted there is nothing more for the lessor to do, and such a guaranty as that of necessity runs on throughout the duration of the lease The lease was intended to be a guaranteed lease, and it is impossible to say that the guarantor could put an end to the guaranty at his pleasure, or that it could be put an end to by his death, contrary to the manifest intention of the parties.'

"Instances of the second class are more familiar. They are where a guaranty is given to secure the balance of a running account at a banker's, or the balance of a money account for goods supplied. There the consideration is supplied from time to time, and it is reasonable to hold, unless the guaranty stipulates to the contrary, that the guarantor may at any time terminate the guaranty. He remains answerable for all the advances made on all the goods supplied upon his guaranty before the notice to determine it is given; but at any time he may say 'I put a stop to this; I do not intend to be answerable any longer; therefore do not make any more advances or supply any more goods upon my guaranty.'

"The guarantees in the case at bar come within the second class above considered. They were, therefore, upon the authorities cited, terminated by the death of the guarantor and notice of it to the plaintiff, as to all subsequent transactions. As, however, the note described in the declaration had been discounted, and the net proceeds had been paid to the maker prior to the death of the guarantor, the plaintiff would have been entitled to recover but for the fact, set up in the pleas, that after notice of the death of the guarantor it extended the time of payment for a further period by taking a new note from the principal debtor and receiving the interest thereon in advance, without the consent of the defendant, and without any reservation of his right assented to by the principal, and, in default of such payment, to pay the debt himself, and proceed at once against the principal. That such action on the part of the plaintiff was sufficient to release the estate of the guarantor, and the defendant as his representative, from liability, is too well established to need the citation of authority."

GUARANTY—LACK OF CONSIDERATION—ASSIGNMENT OF GUARANTY.

Messrs. Abaye, Vison Bimar & Co. assigned the "new account" mentioned in this guaranty to Charles Brum, and authorized him to collect anything due on the guaranty. The principal was in default and the guarantor was sued. It was held that the guaranty was void for the reason that no consideration was expressed in the writing. It was claimed that extension of time of payment was a good consideration, but the court held that there was no forbearance to sue expressed or implied here that the creditor could enforce. It was further held on appeal that the guaranty was personal and could not be assigned so as to give the assignee a right of action against the guarantor.

"I guaranty the 'new account' of Mr. W. C. Gilbert, my husband, with Messrs. Abaye, Vison Bimar & Co., amounting to this date to one hundred and twenty thousand francs, representing the disbursements made by the firm of Abaye, Vison Bimar & Co. since the first day of January, one thousand eight hundred and ninety-one.

"It is well understood:

"(1) That all the profits obtained from Mr. Gilbert's business from and after this day shall be applied to the discharge of this account.

"(2) That, in case of the death of Mr. Gilbert, Messrs. Abaye, Vison Bimar & Co., who are to collect his life insurance, will discharge me completely from the present guaranty.

"(3) In case that, contrary to the expectation of Mr. Gilbert, he should not be able to pay off this account between now and the end of December, 1896, and should oblige you to require the execution of this guaranty, I shall only be able to acquit myself towards you by paying you one-half of my income, amounting to six thousand francs a year; not possessing any capital of which I can dispose. I will therefore require the necessary and proportionate security

"Made at Paris the fourteenth day of January, one thousand eight hundred and ninety-five.

[Signed] M. Gilbert.

"I authorize the above. [Signed] W. C. Gilbert."

The court said in part: "It is argued that this guaranty clearly imports an agreement on the part of the promisees to forbear to enforce payment of the principal indebtedness from the date of the instrument, January 14, 1895, until the end of December, 1896. It is well settled that an agreement of forbearance to sue is a good consideration for a promise to pay the debt of another. Bank v. Parker, 130 N. Y. 415; 29 N. E. 1094, and cases therein cited. These authorities, then, would sustain the position of the appellants, if we could find in the instrument in question any evidence of the existence of a legal consideration, in the shape of an agreement to forbear the enforcement of payment as against the principal debtor. This, however, we are unable to discover. There was nothing in the guaranty which prevented the promisees from suing Mr. Gilbert immediately. The terms of the instrument did preclude them from enforcing the guaranty, as against Mrs. Gilbert, until the end of December, 1896, but they imported no intent to grant any indulgence whatever to Mr. Gilbert. Indeed, the provision that all the profits obtained from his business from and after the date of the guaranty should be applied to the discharge of the guaranteed account implied that the payment of his indebtedness, instead of being postponed at all, was to be begun at once.

"Another question is involved in the decision of the court below, although it was not expressly passed upon. The defendant contends that the plaintiffs have acquired no right to enforce the guaranty by virtue of the assignment of the instrument to them by the original promisees, Messrs. Abaye, Vison Bimar & Co. This depends on the character of the guaranty. If it was special, it was not assignable until a right of action had arisen thereon. Bank v. Kaufmann, 93 N. Y. 273; Shelman & Northrup, 109 N. Y. 473. In our opinion, the guaranty in controversy here may fairly be regarded as thus restricted. 93 N. Y. St. Rep. 121."

GUARANTY—APPLICATION OF PAYMENT.

The Cheshire Beef Company sued George C. Thrall on the following statement of facts:

"Prior to October 31, 1895, the plaintiff (The Cheshire Beef Co.) had sold beef to one Judson H. Grant. On that day the plaintiff and Grant settled, and their accounts were closed and paid up to that date, and thereupon the defendant executed and delivered to the plaintiff the following writing: 'Rutland, Vt., October 31, 1895. This is to certify that I, George C. Thrall, of Rutland, Vt., will be responsible to the amount of $700.00 to the Cheshire Beef Co. for goods purchased by Judson H. Grant, of Rutland, Vt. In case of failure of said Grant to meet this obligation, I guarantee its payment. Geo. C. Thrall, Surety.' On the same day the plaintiff sold and delivered to Grant a bill of beef amounting to the sum of $404.66. Between said last-named date and January 28, 1896, the plaintiff sold and delivered to Grant beef to the amount of $3,212.05, and between said dates Grant paid to the plaintiff $2,528.23, at different times and in different sums. On said 28th day of January, 1896, there was due the plaintiff for beef thus sold and delivered to Grant $683.82, which sum remained unpaid at the time of the trial. The beef in question was sold and delivered to Grant by the plaintiff on the strength of the defendant's guaranty."

The court held that the guaranty only covered the first $700 worth of beef sold; and under the rule of the application of payments, when Grant had paid in $700 on account the guaranty would be released. The appellate court said:

"Munson, J. The defendant agreed in writing to be responsible to the plaintiff as a guarantor 'to the amount of $700,' 'for goods purchased by Judson H. Grant.' The question raised is whether this was a limited or a continuing guaranty. The circumstances connected with the giving of the guaranty plainly require that the words 'goods purchased' be given a future significance. The language thus construed is equally applicable to both kinds of guaranty. We find nothing in the case that affords further aid in determining what was intended. * * * * * *

"It is said by some authorities that the contract of guaranty should be construed liberally in favor of its purpose; that the words used should be taken as strongly against the guarantor as their sense will permit; and that if one intends to be surety only for a single dealing he should be careful to say so. It is said by other authorities that the scope of a guaranty should be restricted to the plain and obvious import of its language; that a mere surety should not be held to pay the debt of another by any forced construction; and that in a doubtful case the presumption should be against the construction that the guaranty is continuing. It is said by some that the courts seem inclined to favor an extension of the liability in cases of doubt, while others say that the decided weight of authority is in favor of the restrictive rule. We are not aware that this court has passed upon the matter, although an expression of Judge Bennett in Noyes v. Nichols, 28 Vt. 159, has led a text writer to infer that it favored the view first stated. But we think it is the more reasonable conclusion that one who becomes a guarantor without valuable consideration should not be subjected to an increased liability by legal implication, and that the burden should be upon the one who desires a continuing guaranty to see that the language employed is sufficient to indicate it. We hold that the defendant's liability was limited to the first $700 worth of goods purchased. Judgment affirmed."

Guaranty of any Liability—Banking; Brokers.

This guaranty is intended to cover points which, if not specifically mentioned, are not included in many forms of general guaranty. They are drawn to cover individual indebtedness, and, as worded, would not probably cover indebtedness of a firm of which the principal debtor was a member; or indebtedness purchased of other parties. If these points are to be covered they should be particularly mentioned. The principal points, which are often held to release a guarantor if not specifically waived, and which are sought to be covered here, are: Waiver of acceptance; notice of default; change or release of other security; extension of time of payment; renewal; application of certain payments; advances made after death of guarantor, and the covering of various forms of the original or subsequently changed indebtedness.

Guaranty of any Liability—Banking; Brokers

Whereas A. B. has or may become indebted or liable to C. D., in open account or by reason of C. D. purchasing, discounting, advancing money on, negotiating or selling negotiable or non-negotiable instruments on which A. B. is directly or contingently liable, or for any other reason or account whatever; Now, therefore, for value received, I hereby, to the extent of dollars, do guaranty the payment of and all such liability or indebtedness or of any ultimate balance that may be due by A. B. to C. D., his heirs, executors, administrators, transferees or assigns, by reason of the premises aforesaid. Acceptance of this guaranty by any beneficiary is hereby waived, as is also any notice of default. The renewal or extension of time of payment of any of the aforesaid liability or indebtedness or ultimate balance is hereby agreed to, as is also any release, addition to, or change of other security. The application, made in the discretion of the beneficiary, of any payments made by A. B. to any beneficiary hereof, whether applied on any of the above mentioned indebtedness or on other indebtedness of A. B. to such beneficiary, is hereby agreed to, as is also any and all acts of A. B. in relation to the aforesaid liabilities or indebtedness.

This guaranty shall apply first to any indebtedness or liability ultimately owned by C. D.; second, to liability or indebtedness on which C. D. may be liable as indorser, guarantor or surety, or which he may have pledged; third, to any other such indebtedness or liability which C. D. may have negotiated or transferred. This guaranty is a continuing one, binding myself, my heirs, executors, administrators, and in case of my death with this guaranty previously unrevoked, it shall cover all transactions made previous to the time when C. D. shall be actually informed of my death.

Witness my hand and seal this day of , 19 , .

_____ [Seal.]

Guaranty of any Liability—Mercantile or Banking.

This guaranty is intended to cover points which, if not specifically mentioned, are not included in many forms of general guaranty. They are drawn to cover individual indebtedness, and, as worded, would not probably cover indebtedness of a firm of which the principal debtor was a member or indebtedness purchased of other parties. If those points are to be covered they should be particularly mentioned. The principal points, which are often held to release a guarantor if not specifically waived, and which are sought to be covered here, are: Waiver of acceptance; notice of default; change or release of other security; extension of time of payment; renewel; application of certain payments; advances made after death of guarantor, and the covering of various forms of the original or subsequently changed indebtedness.

Guaranty of any Liability—Mercantile or Banking.

For value received, and in consideration of credit heretofore extended or which may hereafter be extended by A. B. to C. D., I hereby to the extent of dollars guaranty to A. B., his heirs, executors, administrators, transferees and assigns, the payment of any liability or indebtedness now incurred or which may hereafter be incurred by C. D. to A. B., and any ultimate balance that may be due by reason of such liability or indebtedness, either by open account or by negotiable or non-negotiable instrument on which C. D. is or may be directly or contingently liable, or for any other account or reason whatever. This guaranty shall extend and cover, in such amounts and places as A. B., his heirs, executors or administrators may elect, any liability or indebtedness of C. D. that A. B. may have sold, discounted, pledged, negotiated or transferred. Acceptance of this guaranty by any beneficiary is hereby waived, as is also any notice of default. The renewal or extension of time of payment of any of the aforesaid liability or indebtedness is hereby agreed to, as is also any release, addition to, or change of other security. The application of any payments made in the discretion of any beneficiary, whether applied on the above mentioned liability or indebtedness or on other indebtedness of C. D., is hereby confirmed, as is also any and all acts of C. D. in relation to such liability, indebtedness or ultimate balance. This guaranty is a continuing one, binding myself, my heirs, executors, administrators; and in case of my death with this guaranty previously unrevoked, it shall cover all transactions made previous to the time when A. B. shall be actually informed of my death.

Witness my hand and seal this day of , 19 , at .

_____ [Seal.]

Collateral Guaranty of Third Party.

The specific points covered in this form are: Extension of time of Payment: Compromise: Release of Other Security: Applications of Payments: Partnership Indebtedness: Paper Purchased of Other Parties.

Collateral Guaranty of Third Party.

For value received, hereby, to the extent of dollars and of any interest, costs and expenses which may accrue or be incurred in addition thereto on account of the indebtedness or liability hereby guaranteed, hereby guaranty to (Bank) of , the payment, when due, of any indebtedness or liability now existing or which may hereafter exist from , hereinafter called principal debtor, to the (Bank) and hereby agree that the said (Bank) may grant any extension of time to, or renew any obligation or make any compromise with, the said principal debtor, or with any other person or persons liable on my instrument or debt with the said principal debtor, and that the said (Bank may, for or without value therefor, release or omit to perfect or enforce any securities held or controlled by it now or hereafter, and shall not thereby, or by any neglect as to any securities, be prejudiced or in any way affected in its claim hereunder, or incur any liability to [" me " or " us or any of us "], and further agree that said (Bank) may advance and discount any amount beyond the said sum for the said principal debtor, and that no payment which may be received from the said principal debtor, or on account of any indebtedness or liability from [" him " or " them or either of them "] to the said (Bank) shall be applied in reduction of the liability of [" me " or " us or any of us "] hereunder until after the payment and satisfaction of any indebtedness or liability of said principal debtor beyond the said amount. This shall be a continuing guaranty to the extent aforesaid, and shall apply to and secure any ultimate balance that shall remain owing to the said (Bank) and this guaranty shall not be discontinued until written notice is given to the said (Bank). If at any time any sum owing from the said principal debtor to the said (Bank) shall not be paid, when payable, the whole amount then owing from the said principal debtor shall be deemed, for the purpose of this instrument and the liability created thereby, as forthwith payable, and said (Bank) may recover from [" me" or "us or any of us "] the whole amount hereby guaranteed, or so much thereof as said principal debtor may be owing. This guaranty shall run in favor of said (Bank) and any assignee of its said demand or demands. The indebtedness or liability of the principal debtor, heretofore mentioned, is understood to include liabilities or indebtedness purchased from third parties, as well as indebtedness or liability as principal, indorser, guarantor or surety for others or for a firm of which said debtor was a member when such indebtedness accrued or was renewed or extended. The said Bank may in its discretion make application of any payments made by the principal debtor or us or either of us, or which may be entitled to be applied on any indebtedness or liability of the principal debtor. Notice of acceptance of this guaranty or any default of the debtor is waived.

As collateral security to this guaranty I have deposited with said (Bank) the following described securities:

_____.

Assignment as Collateral Security for any Indebtedness of Third Party.

This assignment specifically covers certain liabilities which it has been held are not covered unless specially mentioned: (1) Indebtedness of firm of which the debtor is a member: (2) Indebtedness or liability accruing to third parties and purchased by the creditor: (3) Transactions accuring after the death of the surety and until the debtor has knowledge of such death: (4) Extension of time of payment or renewals granted by the creditor.

Assignment as Collateral Security for any Indebtedness of Third Party.

In consideration of the sum of one dollar and of other valuable considerations, the receipt whereof is hereby acknowledged, I hereby sell, assign, transfer and set over to B, his heirs, executors, administrators and assigns, [follow here with description of collateral to be assigns]. But this assigment is made as collateral security for the payment of any liability or indebtedness whatever, now existing or which may hereafter exist, from A to B: And the liability or indebtedness hereby secured and intended to be secured includes that of A, either as maker, indorser, acceptor, surety or guarantor for others as well as [himself]; and on instruments or accounts made by A or on which he is liable, which may be purchased from other parties as well as those made directly to or with B. And this security shall apply to all of the above forms of liability and indebtedness where the principal indorser, acceptor, surety or guarantor shall be a firm or co-partnership of which A is or may become a member. This security is intended as a continuing security, binding, in case of my death, my heirs, executors, administrators and assigns as to all transactions, liability and indebtedness incurred before my death, and also incurred after my death, until actual notice of my death shall be brought to B.

The extension of time of payment or the renewal of any of the forms of liability or indebtedness heretofore mentioned shall in no way release me, my heirs or assigns, nor shall the release of any other security, sureties, indorsers or guarantors in any way release me, my heirs or assigns, if such release is made at the request of or with the consent of A.

The application of any payments on the indebtedness or liability of A, to B. made in the discretion of either of them is hereby confirmed. Notice of acceptance of this assignment or guaranty or of any default thereunder is waived. All of the foregoing forms of liability or indebtedness ceasing to exist, this assignment may be withdrawn on my written demand, and at such time and on such demand B. is to give full written discharge or reassignment hereof. Witness my hand and seal this day of 19 , at ——————[Seal.]

Guaranty of Payment—To be Indorsed on Note.

For value received, I hereby guaranty the payment at maturity of the within note (or instrument) to the then holder thereof or his assigns, together with all costs and expenses incurred in the collection of the same from the maker and myself, or either of us.

Guaranty of Collection—To be Indorsed on Note.

For value received, I hereby guaranty the collection of the within note (or instrument) to the then holder thereof or his assigns, together with all costs and expenses incurred in the collection of the same from the maker and myself, or either of us.

Guaranty of Performance—To be Indorsed on Lease Bond, Agreement or Other Contract.

For value received, I hereby guaranty to the legal or equitable owner of the within contract, his heirs or assigns, the full performance thereof on the part of (A. B.), together with all costs and expenses incurred in enforcing such performance from A. B. and myself, or either of us.

Guaranty of the Payment of the Money Part of Contract, Lease or Other Agreement.

For value received, I hereby guaranty the payment on the part of (A. B.) of the sums of money contracted to be paid by him in the within contract, and at the times and manner therein mentioned, together with all costs and expenses incurred in collecting the same from (A. B.) and myself, or either of us.

Waiver of Protest with Consent to Delay Payment

Presentation, demand, protest and notice waived, and consent given that time of payment of this instrument may be delayed or extended without prejudice to my liability as indorser.

Indorsement Without Recourse.

Without recourse to me, and without impliedly or expressly warranting any of the matters contained in or which go to the making up of this instrument.

Bond; Officer—Employee of Bank, Corporation or Firm.

The specific points covered in this form are: (1) That of additional or changed duties of Employee: (2) Failure to take new bond at the expiration of the first term of employment; It has been held that where an employee of a bank gave a bond in which he was mentioned as bookkeeper that the sureties could not be held if he defaulted when he was acting as assistant to the teller; and the same has been held where a bookkeeper and collector in a manufacturing concern was made cashier and handled all the money of the corporation and was temporarily defailed to act as cashier: Unless carefully worded a bond expires with the original term of employment.

Indemnity Bond: Officer or Other Employee of Bank, Corporation or Firm.

Know all men by these presents, That we, A. B. of , and C. D. of , and E. F. of , are held and firmly bound unto (The Bank) of in the penal sum of dollars, lawful money of the United States of America, to be paid to the said (The Bank, its successors or assigns) for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents. Sealed with our seals. Dated the day of , one thousand hundred .

Whereas, the above bounden A. B. has been chosen, appointed or elected cashier (or general clerk, bookkeeper, collector, travelling salesman or other position, naming it) of the said (Bank,) and now is in its employ in some capacity, or is about to be employed by the said (Bank) in some capacity, by reason whereof he will receive or have control or have access to, or be chargeable with money, property, or other things of said (bank,) and others.

Now, the condition of this obligation is such that if the said A. B., his executors or administrators, shall well and truly serve the said (bank) as such cashier (or other officer or position, naming it) during his continuance in office, whether by reason of the above appointment or election, or by its continuance, or by a subsequent appointment or election and continuance, and well and truly perform and discharge all his duties as such officer (or employee), and shall when requested by said (bank,) its agents, successors or assigns, account for and pay over to said (bank,) its agents, successors and assigns, all money and property with which he is chargeable, as such officer, or with which he is chargeable by reason of having improperly taken or misapplied any of said (bank's) money or property, or for which it is liable, outside of his acts or duties as cashier (or other officer, or employee); (to the end that this bond and obligation shall also be a security to said bank, its successors and assigns, for any money and property that may come into the hands of the said A. B. or be misapplied by him, notwithstanding the fact that he may be directed or assigned by said (bank), its successors or assigns to other duties than those contemplated when this instrument was executed,) then this obligation to be null and void: otherwise to remain in full force and effect. Notice of acceptance of this bond or any default thereunder is waived.

_____ [Seal.]

_____ [Seal.]

_____ [Seal.]

Collateral Note.

The specific provisions in this form are:

1. The provision that "as collateral security for this or any other liability," etc., shall cover obligations purchased of outside parties. The Court of Appeals of New York decided in 1899 (55 No. E. Rep. 293; McMaster's Dec. No. 3954) that the usual provision as to the collateral being held as security for "any other indebtedness" did not contemplate liabilities purchased of third parties.

2. The provision that extends the collateral to firm indebtedness, etc. It has been decided that security for "any liability whatever" of an individual did not cover indebtedness of a firm of which he was a member, nor his indorsement of his firm's paper; nor would it secure an indebtedness held by a firm of which the creditor was a member. 121 N. Y. 280; 40 Ohio, 47. 68a.

3. The provision for renewals and extensions of time of payment. This provision is unnecessary except where the collateral is to cover indorsements or engagements for other parties. In such cases it has been held that there must be a provision for such renewals and extensions. 46 N. Y. 370; 25 N. Y. 479. 68a, 69a

4. The provision as to application of payments.

Collateral Note.

$8..... New York,.....19.....

.....for value received promise to pay the.....the undersigned,

Bank, or order at.....

Dollars with interest at the rate of.....per cent. per annum.

Having deposited with said bank the following described property:

as collateral security for the payment of this or any other indebtedness, liability or liabilities of the undersigned to the said bank, due or to become due, or which may hereafter be contracted or existing against the undersigned or either of them, the liabilities hereby secured and intended to be secured including that of maker, indorser, acceptor, surety, or guarantor for others as well as for the undersigned or either of them, and on instruments or accounts which may be purchased from others as well as those made for the accommodation of the undersigned or either of them, and this security shall cover all of the above mentioned forms of liability or indebtedness where the maker, indorser, acceptor, surety, or guarantor shall be a firm or copartnership of which the undersigned or either of them is a member. The extension of the time of payment or the renewal of any of the forms of liability or indebtedness hereinbefore mentioned shall in no way release the undersigned or either of them. Failure to exercise any other security for any of the above mentioned forms of liability or indebtedness shall in no way release the undersigned if such release is made with their consent or the consent of either of them.

The undersigned hereby agree to deposit with the said bank such additional collateral security as the said Bank may from time to time demand; and also hereby give to the said Bank a lien for the amount of all the liabilities aforesaid, upon all the property or securities at any time given unto or left in the possession of the said bank by the undersigned, and also upon any balance of account of the undersigned with the said Bank.

On the non-performance of the foregoing agreements as to furnishing additional collateral, or upon the non-payment of any of the above-mentioned liabilities, then and in either such case the said Bank is hereby authorized to sell, assign, and deliver, the whole or any part of the said securities, or any substitutes therefor, or any additional securities, or any other property at any time held by or left in the possession of the said bank by the undersigned for safe keeping or otherwise, to any broker's board or at public or private sale, at the option of the said Bank, or of either of its officers, without either advertisement or notice, which are hereby expressly waived. If such securities or property are sold at public sale, the said Bank may itself purchase the whole or any part thereof, free from all right of redemption on the part of the undersigned, which is hereby waived and released. In the case of any such sale the said Bank may first deduct all the expenses for collection, sale, or delivery of the property or securities so sold; and may then apply the residue to any one, or more, or all, of the said liabilities, whether due or not due, as either of its officers shall deem proper, making proper rebate for interest on liabilities not then due, and returning the overplus, if any, to the undersigned, who shall remain liable to the said Bank for any deficiency arising upon any such sale. The undersigned do hereby further authorize the said Bank at its option, at any time, to appropriate and apply to the payment of any of the said liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Bank on deposit, or otherwise, to the credit of or belonging to the undersigned, whether the said liabilities are then due or not due. The undersigned further agree that, upon any transfer of this note, the Bank may deliver the said collaterals, or any part thereof, to the transferee, who shall thereupon become vested with all the powers and rights above given to the said Bank in respect thereto, and the said Bank shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter. The said bank may in its discretion make application of any payments entitled to be applied on any indebtedness or liability of the undersigned.

The undersigned further agree, in case of non-payment of any of the above mentioned liabilities, to pay all cost of collection that may be incurred, together with a reasonable attorney's fee.

Bankers Continuing Agreement

The matter after the * in this form is in addition to that appearing in some printed forms. It is added to cover the following points:

1. It has been decided that security for any liability of an individual did not cover indebtedness of a firm of which such individual was a member; nor did it secure his individual indorsement of his firm's paper (McMaster's Dec. Nos. 46, 47, 66.)

2. It has been held that the ordinary collateral agreement accompanying a stock collateral note did not cover paper purchased from third parties, unless it was so specifically stated. (N. Y. Ct. of App., 1899.)

3. The lien of collateral as security for others would not attach to transactions taking place after the death of the owner of the collateral, unless so specifically stated, even if the creditor was ignorant of such death. (McMaster's Dec. Nos. 49, 50.

4. Where collateral is held to secure any liability of a third party has once attached to such liability, the extension of time of payment or the renewal of the liability will release the lien of the collateral, and it will not attach to the new liability unless so specially provided. The words "to secure any liability whatever" will not of themselves cover the extended or renewed liability. (McMaster's Dec. Nos. 64-66)

Banker's Continuing Agreement.

Know all men by these presents, that the undersigned, in consideration of financial accommodations given, or to be given, or continued to the undersigned by the Bank hereby agree with the said Bank that whenever the undersigned shall become or remain, directly or contingently, indebted to the said Bank for money lent, or for money paid for the use or account of the undersigned, or for any overdraft or upon any indorsement, draft, guarantee or in any other manner whatsoever, or upon any other claim, the said Bank shall then and thereafter have the following rights, in addition to those created by the circumstances from which such indebtedness may arise against the undersigned, or his, or their executors, administrators or assigns, namely:

1. All securities deposited by the undersigned with said Bank, as collateral to any such loan or indebtedness of the undersigned to said Bank, shall also be held by said Bank as security for any other liability of the undersigned to said Bank, whether then existing or thereafter contracted; and said Bank shall also have a lien upon any balance of the deposit account of the undersigned with said Bank existing from time to time, and upon all property of the undersigned of every description in the possession of said Bank for safekeeping or otherwise, or coming to the hands of said Bank in any way, as security for any liability of the undersigned to said Bank now existing or hereafter contracted.

2. Said Bank shall at all times have the right to require from the undersigned that there shall be lodged with said Bank as security for all existing liabilities of the undersigned to said Bank, approved collaterals securities in an amount satisfactory to said Bank; and upon the failure of the undersigned at all times to keep a margin of security with said Bank for such liabilities of the undersigned satisfactory to said Bank, or upon any failure in business or making of an insolvent assignment by the undersigned, then and in either event all liabilities of the undersigned to said Bank shall at the option of said Bank become immediately due and payable, notwithstanding any credit or time allowed to the undersigned by any instrument evidencing any of the said liabilities.

3. Upon failure of the undersigned either to pay any indebtedness to said Bank when becoming or made due, or to keep up the margin of collateral securities above mentioned for, then and in either event said Bank may, without advertisement, demand, notice to the undersigned, sell any of the securities held by it as against any or all of the liabilities of the undersigned, at private sale or Broker's Board, or otherwise and apply the proceeds of such sale as far as needed toward the payment of any or all of such liabilities together with interest and expenses of sale, holding the undersigned responsible for any deficiency remaining unpaid. The application of any such sale may be made at the option of said Bank's board or at public or private sale, and a purchaser at such sale from said Bank or any officer or director of the undersigned, such right and equity being hereby expressly waived and released. Upon default as aforesaid, said Bank may also apply toward the payment of the said liabilities all balances of any deposit account of the undersigned with said bank then existing.

It is further agreed that these presents constitute a continuing agreement, applying to any and all future as well as to existing transactions between the undersigned and said Bank.

* And the liabilities or indebtedness hereby secured and intented to secured includes liability or indebtedness either as maker, indorser, acceptor, surety or guarantor for others as well as for and on instruments or accounts which may be purchased from, others, as well as those made to or with said bank or for direct benefit, and this security and agreement shall apply to all of the above mentioned forms of liability or indebtedness where the principal maker, indorser, acceptor surety or guarantor shall be a firm or co-partnership of which or either of us is or may become a member.

This Security is intended as a continuing security binding in the case of the death or either of our heirs, executors, administrators and assigns, as to all transactions, liability and indebtedness incurred before death or the death of either of us, but which may not be transferred to said bank until after such event. The extension of the time of payment or the renewal of any of the forms of liability or indebtedness heretofore mentioned shall in no way release our heirs, executors, administrators and assigns, nor shall the release of any other security, sureties, guarantors, indorsers, makers or acceptors in any way release our heirs, executors, administrators or assigns, if such release is made with our consent or the consent of either of us. Application of any payments may be made to any or the forms of indebtedness or liability of the undersigned in the discretion of said Bank. [Seal.]

Acknowledgment — Corporation — All States.

This form of acknowledgment by a corporation, while containing much that is not needed in many states, contains all of the particular requirements of all states

ACKNOWLEDGMENT—CORPORATION—ALL STATES.

STATE OF ----------
COUNTY OF ---------- } *To wit:*

On this day of 190 , before me, a in and for the of State of personally came (William E. Bonham), known to me to be such identical person, and known to me to be the president of the (naming the corporation), and at the same time personally came before me (Horace Bemis) known to me to be such identical person, and known to me to be the secretary of the (naming the corporation), and they each being duly sworn, acknowledged, deposed and said that they reside in the of ; that they, each, and the other, were, and are, respectively, the officers as above stated of the (naming the corporation); that they each were and are well acquainted with the common or corporate seal of the (naming the corporation): That the seal hereto affixed is such seal that they in the presence of each other affixed such seal hereto by order and direction of the (naming the corporation), and by order and direction of its board of directors; that they, in the presence of each other, signed the name of the (naming the corporation) hereto, and their names as officers, respectively, to this identure, and executed and delivered it by order and direction of the (naming the corporation) and by order and direction of its board of directors, and that all such act and acts they did as the free, voluntary deed, act and acts of the (naming the corporation), and as their free, voluntary deed, act and acts, and for the uses and purposes therein set forth, and that the name of each as applied to this instrument is in the proper handwriting of each.

In testimony whereof I have hereunto set my hand and official seal this day of 1902, at in the of

[SEAL]

(There should be two witnesses to the execution of the instrument).

Official Title----------
Residing at----------
My Commission Expires----------

This form of acknowledgment by a wife, while containing much that is not needed in many states, contains all that is needed in any state.

ACKNOWLEDGMENT—WIFE—ALL STATES.

STATE OF---------, } *To wit:*
County of-------, }

I, , a in and for the do hereby certify that on the day of 190 came before me, known to me to be such identical person, and known to me to be of full age, and known by me to be the wife of , who, being examined by me separate and apart from her husband touching her signature to and voluntary execution of the within instrument, the contents of the same having been made known to her by me, acknowledged to me that she executed, signed, sealed and delivered the same as her act and deed, and for the purposes and consideration therein expressed; that she executed the same freely, understandingly and voluntarily, without fear, constraint, compulsion, or dread of displeasure or undue influence of her husband or any other person; that she doth still voluntarily assent thereto and is still satisfied therewith as her act and deed, and does not wish to retract the execution of the same, and doth renounce, release, and forever relinquish to the within named grantee, , his heirs and assigns, all her interest and estate, and also all her right and claim of dower, of, in, or to all and singular the premises within mentioned and released.

In testimony and witness whereof I have affixed my official seal this day of 190 , at in the of

[SEAL]

(There should be two witnesses to the execution of the instrument).

Official Title----------

Residing at----------

My Commission Expires----------

This form of acknowledgment, while containing much that is not needed in many states, contains all that is needed in any State.

Acknowledgment — All States.

STATE OF-----, County of-----, } *To wit:*

I, , a , in and for , do hereby certify that on the day of , personally appeared before , known by me to be such identical person, and after I had made known to him the contents of the foregoing instrument, he acknowledged that he executed, signed, sealed and delivered the said instrument bearing date as his free and voluntary act and deed, for the uses, purposes and consideration therein expressed, and prays that it may be admitted to record:

In testimony and witness whereof, I have affixed my official seal this day of , 1902, at in the of

---

Official title----------

Residence ----------

My commission expires----------

(There should be two witnesses to the execution of the instrument.)

Bank Account:

Deposit Payable to Either of Two Persons.

In opening the account the title of the account in the pass book might be "Helena Roche or Henry Schwoon: Payable to Either or Survivor." At the time of opening the account Helena Roche and Henry Schwoon would sign the following writing,—which might appear in the signature book or elsewhere:

> "We, Helena Roche and Henry Schwoon, do hereby open an account with the Bank and do hereby authorize, empower and direct the Bank to open an account with us in the name of "Helena Roche and Henry Schwoon, Payable to Either or the Survivor," or under such other designation as said bank may employ, and we, the said Helena Roche and Henry Schwoon, do hereby agree with each other to become and be copartners in the ownership of said moneys, and of all accrued and accruing interest thereon, and of all moneys hereafter to be deposited to said account; and it is agreed that each and either of said parties and the survivor of them may at any and all times draw and receive from said bank the whole or any part of said moneys, and that each of said parties is authorized and empowered to sign their respective names of Helena Roche or Henry Schwoon to any receipt, check, draft, or other voucher for the moneys so drawn."

The above form protects the banks in paying to either after the death of the other, but it is not much evidence to the heirs of the deceased or to the survivor of what their respective interests are. If the depositors wish to make the deposit so that the survivor can take and hold the entire balance the writing could read: "We, Helena Roche and Henry Schwoon, declare that we are joint owners of the money this day deposited in the Bank, in the name of or such other name and title as said bank may designate, and we further declare that any further deposits made by either of us to said account or any interest accrued or credited thereto shall be and is our joint property; that is, either one of us, before or after the death of the other, may sign checks, drafts or orders on said account and receive the money thereon before or after the death of the other, and at the death of either the survivor shall take absolute and single ownership of the balance then due the account."

Guaranty of Collateral Note.

In consideration of one dollar paid to the undersigned, the receipt of which is hereby acknowledged, and of the making, at the request of the undersigned, of the loan evidenced by the within note and contract, the undersigneo nereby jointly and severally guarantee to the National Bank of in New York, its successors, endorsees or assigns the punctual payment, at maturity, of said note and contract and of the said loan, and hereby assent to all the terms and conditions of the said note and contract, expressly agreeing that so long as the maker is bound by said note and contract and the conditions therein contained that we will remain bound,—waiving any defences that the maker or makers could not maintain as maker.

The undersigned hereby waives demand of payment, and also waives the protest, and notice of protest of the within note.

---

96. Assignment of Account.

In consideration of dollars to me paid by of , the receipt of which is hereby acknowledged, I do hereby sell, assign, transfer and set over to the said , his executors, administrators and assigns, the annexed account [or, bill], and all sums of money now due or to become due upon the same, and upon any and all of the items therein mentioned, together with all my right, title and interest therein, and I hereby certify that the various entries in said account are correct and that the balance stated as due is due. And I hereby authorize the said in my name, or in his own, but at his own cost, to take all necessary and proper legal measures to collect, receive and enjoy the same.

Witness my hand and seal this day of , 19 , at .

---------- [Seal.]
[Signature.]

For form of acknowledgment see "Acknowledgment."

If the assignment is of various accounts, it should mention them by name and amount, as near as may be, for the purpose of identification, or it should refer to an annexed schedule where they are so listed.

87. Affidavit to Account by Individual Creditor.

STATE OF ----------, } ss.:
County of --------, }

I, A. B. C., being duly sworn, do depose and say as follows: The foregoing, [or, annexed] account is a true and just statement of the account of with me, as shown by my books of original entry, which I know to be correct.

For form of acknowledgment, see "Acknowledgment."

---------- .
[Signature.]

88. Affidavit to Account by Partner.

STATE OF ----------, } ss.:
County of --------, }

I, A. B. C., being duly sworn, do depose and say as follows: I am one of the general partners of the firm of , doing business under that name at ; I caused the foregoing [or, annexed] account to be prepared from the books of original entry of said firm, and I have compared said account with such original entries, and know it to be a true and just statement of such entries and all of them, and that the balance, as stated, is due and unpaid.

For form of acknowledgment, see "Acknowledgment."

[Signature, individual.]

89. Affidavit to Account by Officer or Employee.

STATE OF ----------, } ss.:
County of --------, }

I, A. B. C., of , being duly sworn, do depose and say as follows: I am the bookkeeper [or other officer or employee] of . I made up the annexed [or, foregoing] account from the books of original entry of , and I know [or, believe] that the said original entries were correctly made, and know that the annexed [or, foregoing] account is a true statement of such entries, and of all of them.

For form of acknowledgment, see "Acknowledgment."

[Signature.]

97. Assignment of Wages.

For value received, I do hereby sell, assign, transfer and set over to A. B. C. of , any and all sums of money due, or coming due, to me from D. E. F. of , as wages for my services as [describe services] between the day of , 19 , and the day of , 19 . And I hereby authorize said A. B. C., or his assigns, to demand, collect, receive and receipt for the same or any part thereof, and if said sum, or any part thereof, should be paid to me, or should come into my hands, I will receive the same solely as the agent of A. B. C., and will transmit the same forthwith to him.

Witness my hand this day of , 19 , at .

---

98. Assignment by a Corporation.

Know all men, that the A. B. C. Company, of , a corporation organized under the laws of the State of , in pursuance of a resolution of the Board of Directors of said company, passed on the day of , 19 , in consideration of dollars, to it paid by D. E. F. of , the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over to said D. E. F. and his assigns, all [full description of all property assigned].

In witness whereof, the said company has caused these presents to be signed in its name, by its president, and sealed with its corporate seal, attested by its secretary, this day of , 19 , at .

A. B. C. Company, by G. H. I., Presideot.

[Corporate seal.] Attest: J. K. L. Secretary.

For form of acknowledgment, see "Acknowledgment."

93. Assignment as Collateral for Debt of Maker.

In coosideration of the sum of one dollar and of other valuable considerations I hereby sell, assign, transfer and set over to , bis heirs, executors, administrators and assigns, [here describe tbe collateral to be assigned].

But this assignment is made as collateral aod additional security for the payment of [follow with a description of the note, or, if not a note, with a description of the principal debt to be secured], and such note [or debt] being paid this assignment is to be void, and the party of the second part agrees to cancel the same of record, if recorded, aod deliver the same to the party of the first part.

Witness my hand and seal this day of , 19 , at .... [Seal.]

[Signature.]

For form of acknowledgment, see "Acknowledgment."

92. Assignment—General.

In consideration of the sum of dollars, to me paid by C. D., of , the receipt whereof is hereby acknowledged, I hereby sell, assign, transfer and set over to the said C. D., his executors, administrators and assigns [here describe the instrument assigned], together with tbe money due and to grow due thereon. And I hereby covenant that there is due and unpaid thereon the sum of dollars, and interest on such sum from .

In witness whereof, I have hereunto set my hand and seal the day of , 19 .

A. B. [Seal.]

For form of acknowledgment, see "Acknowledgment."

108. Assignment of an undivided one-half interest in an invention before the issue of letters patent.

Whereas I, A. B., of L., county of M., State of N., have invented a certain new and useful improvement in harvesters [giving title of the same], for which I am about to make application for letters patent of the United States; and whereas G. D., of R., county of S., State of N., is desirous of acquiring an interest in said invention and in the letters patent to be obtained therefor:

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said A. B., have sold, assigned, and transferred, and by these present do sell, assign, and transfer unto the said G. D. an undivided one-half right to the said invention, as fully set forth and described in the specification prepared and executed by me on the day of , 19 , preparatory to obtaining letters patent of the United States therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to A. B. and G. D.

In testimony whereof I have hereunto set my hand and affixed my seal this 4th day of May, A. D. 19 .

A. B. [Seal.]

In presence of—
O. P.
S. T.

109. Assignment of the entire interest in letters patent.

Whereas I, A. B., of L., county of M., State of N., did obtain letters patent of the United States for an improvement in car-wheels, which letters patent are numbered , and bear date the 5th day of June, in the year 19 ; and whereas I am now the sole owner of said patent and of all rights under the same; and whereas E. F., of R., county of S., State of N., is desirous of acquiring the entire interest in the same:

Now, therefore, to all whom it may concern, he it known that, for and in consideration of the sum of dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said C. D., have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said E. F. the whole right, title, and interest in and to the said improvement in car-wheels and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said E. F, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made, together with all my right, title and interest in and to damages, profits, royalties and recoveries for past infringements of said letters patent, together with the right to sue for and collect the same to his own use, by proper legal proceedings in his own name or otherwise.

In testimony whereof I have hereunto set my hand and affixed my seal at L., in the county of M. and State of N., this 25th day of July, A. D. 19 .

A. B. [Seal.]

In presence of—
N. P.
O. T.

It will be noticed that the above assignment includes the right to collect damages for previous infringements. This right does not follow the mere assignment of the letters patent, and the clause giving such right does not appear in the usual printed assignments.

110. Assignment of an undivided interest in letters patent.

Whereas, I, A. B., of L., county of M., State of N., did obtain letters patent of the United States for an improvement in hay-rakes, which letters patent are numbered , and bear date the 3d day of August, in the year 19 ; and whereas C. D., of R., county of S., State of N., is desirous of acquiring an interest in the same:

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said A. B., have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said D. E. the undivided one-half part of the whole right, title, and interest in and to the said invention and in and to the letters patent therefor aforesaid; the said undivided one-half part to be held and enjoyed by the said C. D., for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal at L., in the county of M., and State of N., this 7th day of June, A. D. 19 .

In presence of— A. B. [Seal.]

N. P.

O. T.

127. Bond of Indemnity; To Bank in Paying Lost Check.

Know all men by these presents, That we, A. B. of , and C. D. of , are held and firmly bound unto Bank [state the technical corporate title] in the sum of dollars, lawful money of the United States of America, to be paid to the said Bank, or to its certain attorney, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals. Dated the day of , in the year of our Lord, one thousand nine hundred.

The condition of this obligation is such, That, Whereas, the said Bank, at the request of A. B., did on or about , issue its check for dollars on the Bank of , dated , and payable to the order of , which check is said to have been lost before being presented for payment, and whereas the said bank has issued its duplicate check in lieu of said lost check [or has paid to A. B. the sum of dollars in payment of such check] on the agreement that this bond would be given.

If, therefore, the said A. B. and C. D., their executors or administrators, or either of them, shall and do deliver up the said check unpaid, when it shall be found, to the said bank or its assigns, to be cancelled, and until the same shall be so delivered up and cancelled, save, defend, keep harmless, and indemnify the said bank or its assigns, and their goods and chattels, lands and tenements, of and from the said check, and of and from all actions, suits, payments, costs, charges and damages, for or by reason thereof; then this obligation to be void, or else to be and remain in full force and virtue.

---------- [Seal.]

---------- [Seal.]

For form of acknowledgment, see "Acknowledgment."

Bills of Sale—Chattel Mortgage.

A bill of sale is an instrument in writing which is evidence of the transfer of personal property. They are seldom used in ordinary transactions of bona fide sales, as the delivery of the property is usually sufficient evidence of title.

GIVEN AS SECURITY.—Where bills of sale are given as security—no matter how absolutely they may be worded as evidencing a sale—they should be executed and recorded in every respect as a chattel mortgage, as that is what they then are. (See Chattel Mortgage.) 52 Minn. 497; 63 Wis. 249; 55 Md. 419; 45 N. J. Eq. 208; 89 Mich. 357; 24 Ala. 355; 120 N. Y. 327.

116. Bills of Sale—To Be Recorded Both as Chattel and a Real Estate Security.

Know all men by these presents, That I, A. B. of , of the first part, for and in consideration of the sum of dollars, lawful money of the United States, to me in hand paid, at or before the ensealing and delivery of these presents by C. D., of , of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey unto the said party of the second part, his executors, administrators and assigns "one Johnson planer No. 4, one Williams Morticing Machine No. 1, one Raymond Belt Saw No. 3, one Hammond Engine No. 2." "All of which are now used by me in my mill on Water street, and which it is agreed shall remain there and be used by me until October first next." To have and to hold the same unto the said party of the second part, his executors, administrators and assigns forever. And I do for myself, my heirs, executors and administrators, covenant and agree, to and with the said party of the second part, to warrant and defend the sale of the said property hereby sold unto the said party of the second part, his executors, administrators and assigns, against all and every person and persons whomsoever.

In witness whereof, I have hereunto set my hand and seal the day of , in the year one thousand hundred and .

---------- [Seal.]

For form of Acknowledgment, see "Acknowledgment."

The foregoing bill of sale should be recorded, as immediate possession is not to be taken by the purchaser.

It should be recorded both as a real estate mortgage and as a chattel mortgage, for the reason that if the engine or machines are affixed to the building in a certain way—and in just what way the courts differ—then they are deemed to be a part of the realty. This course should be followed if the instrument was drawn as and called a chattel mortgage.

Machinery, which, from its nature, requires to stand on a foundation, or be bolted to the floor, or attached to the building, before it can be properly operated, is usually deemed to be a part of the real estate; and when so placed it would probably be covered by any existing mortgages on the mill or the real estate, and such existing mortgage would probably have precedence over a bill of sale or chattel mortgage.

126. Bond to Indemnify for Paying a Lost Note.

Know all men by these presents, That we, A. B. of , and C. D. of , are held and firmly bound unto E. F. of , in the penal sum of dollars, lawful money of the United States of America, to be paid to the said E. F., his executors, administrators or assigns: for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the day of , one thousand nine hundred .

Whereas A. B. is the owner of a certain promissory note for dollars, dated , and payable after date, signed by C. D., and payable to the order of , and which said note is lost or destroyed and cannot now be produced by him; and whereas C. D. has this day paid to A. B. the full amount due on said note upon the agreement that this bond of indemnity would be given, and that A. B. will indemnify and save said C. D. harmless in the matter, and will deliver up said note to C. D. when found; Now the condition of this obligation is such, that if the above bounden A. B. and C. D., their heirs, executors, administrators, or any of them, shall well and truly indemnify and save harmless the said E. F., his executors and administrators, from and against the said note and any and all damages, costs, charges and expenses and all actions or suits, whether groundless or otherwise, by reason of said note, and also deliver or cause said note to be delivered to said E. F. when found, then this obligation is to be void; otherwise to remain in full force and effect.

---------- ... [Seal.]
[Signature.]

---------- [Seal.]
[Signatnre.]

For form of acknowledgment, see "Acknowledgment."

219. Power of Attorney.

Know all men by these presents, tbat I, A. B., of , in tbe county nf , and State of , have made, constituted and appointed, and by these presents do make, constltute and appoint C. D., of , in said county my true and lawful attorney for me and in my name, place and stead to transact any business in wbich I am, or may become interested, in such manner and to such extent as he may deem advisable, and to manage, control, operate, sell, mortgage, pledge, and use any and all property which I now bave, or wbich I may hereafter in any way acquire; and to purchase for me such property and tbings, real or personal, as he may deem advisable, or to deal in and exchange tbe same, and, generally, to manage, control and conduct all my business, property and affairs; and to that end, and as incident to the above mentioned authority, my said attorney is authorized to sign, endorse, draw, accept, make, execute, and deliver all such notes, checks, bills of exchange and othe. contracts or instruments in writing with o without seal, and also to sign my name as attorney to any transfer of any stocks, bonds or othe. securities whatsoever, or agreements, or papers or paper writings, and to make such verbal contracts as he may deem proper in my name regarding the matters hereby authorized, and as and when he deems proper, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all tbat my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal tbe day of , in the year one thousand nine hundred.

Sealed and Delivered in the presence of—

E. F.
G. H.

A. B. [Seal.]

For form of Acknowledgment, see "Acknowledgment."

220. Power of Attorney to Draw Dividend.

Know all men by these presents, that I, A. B., of , in the county of , and State of , do authorize, constitute and appoint C. D., of said , my true and lawful attorney, in my name, place and stead to receive from the the dividend now due me or which may be due me prior to , on all stock standing in my name on the books of the said and receipt for the same hereby ratifying and confirming all that may lawfully be done in the premises by virtue hereof.

Witness my hand and seal this day of , 190 .

Sealed and Delivered
in the presence of
E. F. A. B. [Seal.]

222. Power of Attorney—Financial.

Know all men by these presents, that I, A. B., of , in the county of , and State of , have made, constituted and appointed, and by these presents do make, constitute and appoint C. D. of said , my true and lawful attorney for me and in my name, place and stead, to make, sign, draw and deliver any bank check or checks on any bank, banker or trust company with whom I keep an account, whether against funds actually at the time standing to my credit or against or in anticipation of deposits to be made or funds to be placed to my credit thereafter: to endorse for deposit and collection any and all bank checks, certificates of deposit, promissory notes, drafts, bills of exchange, or other orders or instruments for the payment of money, now drawn or endorsed, or hereafter drawn or endorsed, payable to my order and to accept any draft or drafts, bill or bills of exchange or other order or orders for the payment of money, now drawn or hereafter to be drawn upon me, also for me and in my name, place and stead, from time to time, to borrow such sum or sums of money as my said attorney may think proper, and as security for the repayment of such loan or loans, to make, sign and deliver any promissory note or notes, bill or bills of exchange draft or drafts, or other order for the payment of money, to pledge or hypothecate any and all commercial paper, bonds, stocks, certificates of deposits or securities belonging to me, to endorse any and all such commercial paper, and to make, execute and deliver any and all such instruments of assignment or transfer, as may be necessary, expedient or customary in like cases to effectually transfer the securities to the person, firm or corporation making such loan or loans, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the first day of May, in the year one thousand eight hundred and ninety-nine.

Sealed and Delivered
in presence of
E. F. A. B. [Seal.]

For form of Acknowledgment, see "Acknowledgment."

223. Power of Attorney to Sign Checks.

(This form would not bind the principal to overdrafts.)

Know all men by these presents, that I, A. B., of , in the county of , and State of , do make, constitute and appoint C. D., of said , my true and lawful attorney, for me and in my name.

1. To draw checks against my account in the Bank.

2. To endorse notes, checks, drafts or bills of exchange, which may require my indorsement for deposit as cash or for collection in the said bank.

3. To accept all drafts or bills of exchange which may be drawn upon me, and to do all lawful acts requisite for effecting these premises; hereby ratifying and confirming all that the said attorney shall do therein by virtue of these presents.

In witness whereof, I have hereunto set my hand and seal the first day of October, in the year of our Lord one thousand nine hundred,

Signed, Sealed and Delivered
in presence of
E. F.

A. B. [Seal.]

Power of Attorney—Partnership.

(This form would cover overdrafts and accommodation indorsements.)

Know all men by these presents, that we , have made, constituted, and appointed by these presents our true and lawful attorney for us and in our name, place, and stead, in transacting any business, directly or indirectly, with any bank or corporation, their officers or agents, or with any other person or persons, to sign, indorse, draw, accept, make, execute, and deliver all such notes, checks, bills of exchange, overdrafts, and other contracts or instruments in writing with or without seal, and also to sign our firm name as attorney to any transfer of any stocks, bonds, or other securities whatsoever, or agreements or papers or paper writings in any way connected with our said business, and to make such verbal contracts as he may deem proper, and to do any act or acts or make any contract or contracts, either verbal or in writing, or sign any paper or papers in any way connected with our said business, or in which it shall be necessary to sign the name of our said firm; it being intended to give and hereby giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as we or any member of our said firm might or could do if personally present; hereby ratifying and confirming all that our said attorney shall lawfully do or cause to be done by virtue hereof; and any such notes, checks, bills of exchange, contracts, or instruments, stocks, bonds, or securities, or other paper of whatsoever nature, signed, indorsed, drawn, accepted, made, transferred, executed, or delivered by our said attorney, shall bind, and are hereby ratified and confirmed by the undersigned. Even if made in whole or in part for the accommodation or benefit of third parties or for the accommodation and benefit of our said attorney.

In witness whereof, we have hereunto set our hands and seals the day of , in the year one thousand eight hundred and .

Sealed and delivered in the presence of

---------- [Seal.]

---------- [Seal.]

---------- [Seal.]

For form of acknowledgment, see "Acknowledgment."

224. Power of Attorney—Sale and Transfer of Stock.

Know all men by these presents, that I, A. B., , in the county of , and State of , for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto C. D., of said , forty shares of the capital stock of the company, standing in my name, on the books of the said company, and do hereby constitute and appoint said C. D. my true and lawful attorney irrevocable for and in my name and stead to his use, to sell, assign, transfer and set over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that my said attorney or substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the first day of October, one thousand nine hundred.

Sealed and Delivered in the presence of
E. F.

For form of Acknowledgment, see "Acknowledgment." A. B. [Seal.]

225. Power to Transfer Stock.

Know all men by these presents, that I, A. B., of , in the State of , do hereby constitute and appoint C. D., of said , to be my true and lawful attorney, for me and in my name and behalf, to sell, assign and transfer to E. F., of said , the whole or any part of my stock in the Y. M. O. Railroad Company, and for that purpose to make and execute all necessary acts of assignment and transfer.

In witness whereof, I have hereunto set my hand and seal this 1st day of October, 1900.

Sealed and Delivered in the presence of
G. H.

For form of Acknowledgment, see "Acknowledgment." A. B. [Seal.]

226. Power of Attorney Irrevocable.

Know all men by these presents, that I, A. B., of , in the county of , and State of , in consideration of one dollar, and other good and valuable consideration, to me paid by C. D., of said , the receipt whereof is hereby acknowledged, have irrevocably made, constituted and appointed, and by these presents do irrevocably make, constitute and appoint said C. D my true and lawful attorney, for me and in my name, place and stead to sell, barter, exchange or mortgage in whole or in part, a certain piece or parcel of land situated in , in the county of , and State of , and bounded and described as follows, viz.: [description of property], and to sell, barter, exchange or mortgage any other real or personal property received or taken in whole or partial payment or exchange therefor, wholly or in part, at any time within three years from the date hereof giving and granting unto my said attorney full and irrevocable power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the first day of October, in the year one thousand nine hundred.

Sealed and Delivered
in the presence of
E. F.

A. B. [Seal.]

For form of Acknowledgment, see "Acknowledgment."

The right to give and to use proxies at meetings of corporations is generally regulated by statute in the different States and in some cases the form of proxy to be used is given in the statute.

229. General Form of Proxy.

Know all men by these present, that do hereby constitue and appoint , attorney and agent for , and in name, place and stead, to vote as proxy at any election of or of the stockholders of [insert name of the corporation], according to the number of votes should be entitled to vote, if then personally present, hereby revoking all previous proxies.

In witness where have hereunto set hand and seal, at , the day of ,190 .

Signed, Sealed and Delivered
in the presence of

---------- [Seal.]
[Signature.]

230. Form Given in New York Business Corporations Law.

I, , of , do bereby appoint , of to vote as my proxy at the annual meeting of stockholders of [insert name of corporation],to be held on tbe day of , 190 , and at any adjourned meeting thereof.

In witness wbereof, I have bereunto set my band and seal, this day of , 190 .

In presence of

----------[Seal.]

The New York law provides that no proxy sball be valid for more than eleven months from its date, unless some other time shall be specifically limited in it.

This form of execution and witnessing of a will is good in any state. Some states do not require a witness, — none require more than three.

233. Will.

I, A. B., of , in the county of , and State of , being of sound and disposing mind and memory, do make, publish and declare this to be my last will and testament, hereby revoking any and all former wills by me at any time heretofore made.

1. I bequeath to
2. I bequeath to
3. I bequeath to
4. I bequeath to
5. All the rest, residue and remainder of my estate, real, personal and mixed, I give, devise and bequeath to

I make, constitute and appoint , to be executors of this my last will and testament.

In witness whereof, I have hereunto subscribed my name and affixed my seal the first day of October, in the year of our Lord one thousand nine hundred

A. B. [Seal.]

The above written instrument, consisting of two pages, was subscribed by the said A. B. in our presence, and acknowledged by him to each of us; and he at the same time declared the above instrument so subscribed to be his last will and testament; and we at his request, in his presence, and in the presence of each other, have signed our names as witnesses hereto, and written opposite our names our respective places of residence, on the day and year last above written.

O. P. residing at .
Q. R. residing at .
S. T. residing at .

TIME OF EMPLOYMENT.—"A hiring at so much a day, week, month or year, no time being specified, is an indefinite hiring, and no presumption attaches that it was for a day even, but only at the rate fixed for whatever time the party may serve . . . A contract to pay one $2,500 a year for services is not a contract for one year, but a contract to pay at the rate of $2,500 a year for services actually rendered, and is determinable at will by either party." 148 N. Y. 117; 1 Cal. 450; 35 Ark. 156; 28 Wis. 231.

CONTRACTS FOR MORE THAN ONE YEAR.—A contract for services for more than one year comes within the statue of frauds and must, to be valid, be in writing, and signed by the parties; other contracts for services, including contracts from year to year, may be verbal.

220. Employment Contract—Definite Time.

Memorandum of agreement, made this day of , 190 , by and between A. B., of , in the county of , and State of , party of the first part, and C. D., of , in the county of , and state of , party of the second part: Witnesseth, In consideration of the mutal agreements, hereinafter set forth, and for other good and valuable considerations, the said parties agree to and with each other as follows, viz.:

The party of the first part agrees to hire and employ, and hereby does hire and employ, the party of the second part as a clerk and accountant,to perform such clerical and office duties as the party of the first part may from time to time prescribe and direct, for the specified and definite time of one year from the date thereof, at the yearly salary of eighteen hundred dollars payable in equal monthly payments of one hundred and fifty dollars each, on the last day of each calendar month of said employment.

The party of the second part agrees to accept and undertake, and hereby does accept and undertake, the said hiring and employment, at the yearly salary, and upon the time, terms and conditions above specified, and agrees to give his best efforts and energy to the performance of such clerical and office duties as the party of the first part may from time to time prescribe and direct, and to faithfully serve the party of the first part to the best of his ability at all times and in all respects within the scope of his said employment.

In witness whereof, the said parties have hereto set their hands and seals the day and year first above written.

In presence of

E. F.

A. B. [Seal]
C. D. [Seal.]

201. Employment Contract—Terminable at Any Time.

DANBURY, CONN., October 1, 1902.

Mr. A. B., New Haven, Conn.

Dear Sir.—I need a superintendent for my mill in this place, and you have been recommended to me for the position. If you will take it, I will give you twelve hundred dollars a year payable monthly, and you can commence on the fifth of this month.

Yours truly,

C. D.

NEW HAVEN, CONN., October 2. 1902.

Mr. C. D. Danbury, Conn.

Dear Sir.—I have just received your letter of yesterday, and write to say, I hereby accept your offer of employment as superintendent of your mill in Danbury, on the terms you mention, and shall be ready to enter upon my duties on the fifth of this month, as suggested by you.

Yours truly,

A. B.

QUESTIONS.

What are the principal forms of commercial paper in daily use? (See Ill. page 5.)

Is a bond and mortgage a negotiable instrument? A lease? A building contract? 1. Page 5.

What is the material difference between a negotiable and a non-negotiable instrument? 2. Page 5.

When did negotiable instruments, as such, come into use? 3. Page 6.

If money was stolen from the true owner, could he recover it from one who came by it innocently if he could positively identify it? How would this be as to a horse; a watch; a quantity of grain; a negotiable instrument? 5. Page 7.

Who can take advantage of the special privileges surrounding commercial paper? 8, 9, 10. Page 8.

Would a person be a holder in due course, or a bona-fide holder, if he took the instrument after it was due? Or if it had some irregularity on its face? Or if he had notice of any defects or infirmities in it, or in the title of the seller? Or if he did not take it for a valuable consideration? 8, 9, 10. Page 8.

Are bonds ever classed as negotiable instruments? If so, what bonds? 11. Page 9.

Are bonds called commercial paper? 11. Page 9.

Must commercial paper be in "writing"? 19a. Page 11.

Is commercial paper valid if written with a pencil? 19a. Page 11.

Would type impressions be called writing in any part of a negotiable instrument? 19a. Page 11.

Is there any part of a commercial paper that requires a particular kind of writing? 19a. Page 11.

Is it necessary to the validity of negotiable instruments that the place of issuance be stated? 19b. Page 11.

Must a negotiable instrument have a date expressed on its face in order to make it valid? 19b. Page 11.

Is an instrument dated on Sunday ever valid? 19b. Page 11.

Can the instrument be properly dated back or dated ahead? 19b. Page 11.

Is an instrument dated and delivered on July 4th or December 25th, or any secular holiday valid? 19b. Page 11.

Is an instrument good in the hands of one who knew it was dated and signed on Friday but delivered and first sold on Sunday? 19b. Page 11.

If an instrument had no date written on it, from when would the law fix its date? 19b. Page 11.

If the instrument was dated and signed on Sunday, but not delivered or sold until Tuesday, would it be valid? 19b. Page 11.

How is the time of payment of commercial paper usually expressed? 19c. Page 12.

If no time of payment is written in the instrument, when is it payable? 19c. Page 12.

If the blank line for writing time of payment is not filled, when is the paper due? 19c. Page 12.

Can a negotiable instrument be payable in fixed installments? 19c. Page 12.

If the paper is payable on demand, when can demand be made? 19c. Page 12.

When must the demand of payment be made on paper payable on demand? 19c. Page 12.

Is there any different rule, than that last mentioned, in regard to checks? 19c. If so, state it. 19c. Page 12.

What is a "reasonable time" in which to make demand on an instrument payable on demand? 19c. Page 12.

How long would a prudent man hold such an instrument without a demand if he expected to retain the liability of an indorser thereon? 19c. Page 12.

When is an instrument payable "at sight" usually payable? 19c. Page 12. Are there exceptions? Page 12.

("Days of grace" are three days' additional time allowed the payor in which to make payment. See page 40.)

When an instrument is payable a given time "after sight," when does "sight" date from? 19c. Page 12.

Is an instrument payable at the death of the maker negotiable? 19c. Page 12. Why? 19c. Page 12.

Would the instrument be negotiable if payable one year after the marriage of the maker? 19c. Page 12. Why? 19c. Page 12.

It is said that the time of payment of commercial paper must not depend on a contingency: In the event of the contingency happening, would the paper then be negotiable? 19c. Page 12.

Name some contingencies as to time of payment that would make the paper non-negotiable, and why. 19c. Page 12.

It is said that the promise or order to pay must be unconditional, and not dependent on the performance of any further act or duty. Name any such condition that would violate this rule. 19d. Page 14.

QUESTIONS.

The order or promise to pay must not be out of some special account or fund. Name some directions or promises to pay that would disregard this rule. 19d. Page 14.

The instrument must name a payee. If it is payable "to order," must the payee be named with any more certainty than if payable to "bearer"? 19e. Page 15.

If the payee is properly named, is it necessary that the words "to order" or "or bearer," or their equivalent, be used? 19e. Page 15.

What is the effect if the maker draw the instrument to the order of a fictitious person? Is the instrument negotiable? Who is it payable to? 19e. Page 15.

Does paper as above drawn have the sanction of law? Who cannot enforce it? 19e. Page 12.

What is the status of paper payable to an impersonal payee,—as "Cash or order"? 19e. Page 15.

Is it proper to make commercial paper payable to the order of one who is doing business under an assumed business name,—as "The Empire Grocery Company"? 19e. Page 15.

Can the same person be maker, acceptor, drawee, and payee of a negotiable instrument? 19e. Page 15.

Can there be more than one payee? 19e. Page 15.

If the amount stated in figures and that in writing are at variance, which will govern? 19f. Page 16.

What medium must commercial paper be payable in? 19f.

Name some expressions as to medium of payment that are good,—and some that are bad. 19f. Page 16.

Can the promise to pay be in goods and chattels? 19f. Page 16.

Is a note which provides for the payment of attorney's fees non-negotiable in some States? 19f. Page 16.

In some States must the instrument be payable at a bank? If so, what States? 19g. Page 17.

Are the words "value received," or similar expressions, necessary? 19g. Page 17.

What is the effect of a material alteration of the instrument? 19 h-i. Page 18.

What parts may not be altered? 19 h-i. Page 18.

Would the alteration be fatal if the amount was increased? 19 h-i. Page 18.

Would the alteration be fatal if the amount or liability of the parties was decreased? 19 h-i. Page 18.

If the alteration was innocently made, would it have any effect on the instrument? If so, what effect? 19 h-i. Page 18.

QUESTIONS.

If the instrument was mntilated hy a stranger, what effect would it have? 19 h-i. Page 18.

Must "notice" of infirmity or defect of title in the instrument he written notice? 19 h-i. Page 18.

Mention some infirmities as shown in Nos. 16, 17, 18, 30, 31, 32, 86, 87.

Who is the drawer or maker of commercial paper? 20. Page 20.

Who is the drawee? 21. Page 20.

Who is the payee? 22. Page 20.

If the drawee accepts the hill, what is he then called? 23. Page 20.

Who ia an indorser? 24. Page 20.

Who are the original parties to a check? 25. Page 20.

Who are the original parties to a promissory note? 26. Paga 20.

Who are the original parties to a hill of exchange or to a draft? 27. Page 20.

Does the drawer of a check, hy the mere act of drawing it, make any special representations? If so, what? 30. Page 21.

If such representationa are false, what consequences may follow? 31. Page 21.

What engagement does the maker or drawer of a promissory note undertake? 32. Page 21.

If he rails in his engagement, doea he, or has he, therehy committed a fraud? 32. Page 21.

What are the consequences if the maker of a note fails to pay? 32. Page 21.

What does the drawer or maker of a hill of exchange or of a draft represent to the holder? 33. Page 21.

What legal wrong has he committed if auch representationa are not fulfilled? 34. Page 21.

Who is the drawee of a check? 35. Page 22.

In merely opening an account with a depositor haa the hank, without doing or aaying anything further, entered into any special contract with him? What, if any? 36. Page 22.

Can a hank make partial payment of a check? 36. Page 22.

Must a hank partially pay a check and indorse the partial payment on it if the depositor's account ia not good for the whole amount? 36. Page 22.

If a depositor makes a promissory note or accepts a hill payahle at the hank, must the hank treat such note or hill, at its maturity, as it would the depositor's check? 37 Page 22.

If a hank holds money of a depositor, hut has made no apecial agreement to pay his

checks drawn in favor of other persons, has it obligated itself to him to pay them? 38. Page 22.

If the drawee of a bill of exchange is indebted to the drawer, is he under legal obligation to accept and pay the drawer's drafts payable to third parties? 39. Page 22.

If "A" is indebted to "B," and the debt is due and no special place of payment has been provided, must "B" present his claim to "A," or must "A" hunt up "B" and tender payment? 40. Page 22.

Before a drawee has accepted a bill what implied obligation is he under to the holder? 41. Page 22.

When a bill has been accepted, who, if any party to it, has promised to the others that he alone will pay it? 43, 44, 45. Page 23.

If a drawee accepts the bill, what is a usual and proper way of doing it? 46. Page 23.

If no special place of payment is named in a bill of exchange, may the drawee accept it payable at his bank in a near-by city or village, but different from the one to which the bill was addressed to him? 47. Page 23.

Must the acceptance be on the face of the paper? 48. Page 23.

Must the word "accepted" be used? 48. Page 23.

Is there any part of an acceptance that the holder may insist on being done in a specific way? If so, what? How? 49. Page 23.

If the drawee is willing to accept on certain conditions or with certain qualifications, and will state them in the acceptance, should or must the holder allow him so to accept? 50. Page 24.

What change, if any, takes place in the liabilities of the parties to a bill if the holder chooses to allow a conditional or qualified acceptance? 50. Page 24.

Can you name any qualification in accepting that might change the liability of the parties? 51. Page 24.

Must a bank certify or accept in writing a depositor's check if it is good? 52. Page 24.

How may a bank properly accept or certify a check? 52. Page 24.

What new obligation, if any, has a bank assumed in certifying a check? 53. Page 24.

Who is the payee of commercial paper? 54. Page 24.

What principal obligation, if any, does a payee assume in being named as payee? 54. Page 24.

Give short definition of the term "indorser." 59. Page 25.

Give a short statement of the obligations assumed by an indorser? 56. Page 24.

QUESTIONS.

Does the term "indorser" apply to one who writes his name on the back of a non-negotiable instrument? 55. Page 24.

What, if any, difference is there in the liability of one who writes his name on the back of a non-negotiable instrument and one who so writes his name on commercial paper? 57. Page 25.

What has the indorser promised by his indorsement? 61. Page 25.

Is the indorser's promise conditional, and, if so, in what way? 61. Page 25.

Has the holder of the paper any duties to perform or have performed, at any time, in order to keep alive the liability of the indorser? 61. Page 25.

How many indorsers can there be? 62. Page 25.

Does it make any difference to an indorser where his name appears with others on the back of the paper? If so, what difference? 64, 65. Page 26.

Does the owner of the paper have to proceed against the indorsers in any special order? 66. Page 26.

What part of the debt can the holder collect from each indorser? 66. Page 26.

Where must the indorsement be written? 67. Page 26.

Is an assignment on a separate paper equivalent to an indorsement? If not, why not? 68. Page 26.

What action or inaction, if any, on the part of the holder may release the indorser? 70. Page 26.

If the name of the payee or indorsee is misspelled, who may correct it, and how? 71. Page 27.

To whom do the terms "principal obligor" or "party primarily liable" apply? 72. Page 27.

Who is the principal obligor to a promissory note? 73. Page 27.

Who is the principal obligor to an unaccepted bill of exchange? Or draft? Or check. 74. Page 27.

Who is the principal obligor to an accepted bill? Or draft? Or check? 75. Page 27.

What is the order of liability among themselves to the parties to a promissory note? 76-80. Page 27.

Can the maker collect the note from any indorser? If so, which? 83. Page 28.

Can the first indorser, if he has paid the note, collect it, or any proportion of it, from any indorser? If so, which, and what proportion? Can be collect of the maker? 81-84. Pages 27, 28.

Can the third indorser, if he has paid the note, collect any part of it from the first or second indorser? If so, what part, and from whom? 81-84. Pages 27, 28.

If several parties have signed the note on its face, as makers, what is their liability among themselves? 85. Page 28.

Must the holder of the note respect the foregoing liability of makers and indorsers among themselves? 87. Page 28.

What is the order of liability among themselves of the parties to an unaccepted bill of exchange? 89. Page 28.

What is the order of liability among themselves to an accepted bill of exchange? 90. Page 28.

What order of liability exists on a check not yet accepted or paid? 91. Page 29.

If a bank, for an idle or insufficient reason, refuses to pay a check, can the holder and owner force payment from the bank? 91. Page 29.

When a bank certifies a check for the holder, what is the order of liability of the parties? 93. Page 29.

Is there a different rule from the foregoing if the drawer has the check certified? What difference? 94. Page 29.

(Read 95, 96, 97, 98, as to the general status and obligation of a strict "surety.")

In what particular does the warranty of an indorser differ from that of a surety? 99. Page 30.

(Read 100 to 106, as to the general status of a guarantor.)

Does the word "guarantor" carry with it any fixed, precise meaning as to what the guarantor has promised to do? 102. Page 31.

How is a guarantor's promise interpreted,—and where is it found? 101-104. Page 31.

(This rule as to interpreting the liability of a guarantor applies to all kinds of contracts.)

If the holder of a promissory note wishes to retain the liability of all the parties thereto, what, if any, duty is imposed on him? 107, 108, 109. Page 31.

What duty is imposed on the holder of a check if he deserves to retain the liability of an indorser? 110. Page 32.

Under what circumstances is the maker of a check released from liability? 111, 112. Page 32.

Is the bank released from liability by any delay in presentation of a check? 113. Page 32.

Can the holder of a check compel the bank to pay him? 114. Page 32.

If the bank refuses payment, to whom must the holder look for redress? 115. Page 32.

What duty, if any, does the holder of a bill of exchange owe to the parties in order to retain their liability? 116, 117. Page 32.

If a bill has been protested for non-acceptance, need it be protested for non-payment? 119. Page 32.

Who may bind himself as a party to commercial paper? 120. Page 32.

Can business corporations issue commercial paper? And if so, how? 121. Page 32.

Can business corporations, through proper officers, make and indorse paper as an accommodation to others? 121. Page 32.

If a minor has had the full benefit of commercial paper which he has indorsed or issued, can it be enforced against him? 122. Page 33.

Can women, generally, bind themselves as makers or indorsers of commercial paper? 123. Page 33.

Can one partner bind the other partners by making or indorsing commercial paper in the firm name? 124. Page 33.

Does the rule as to commercial paper signed or indorsed in a partnership name hold the same in all partnerships? If not, explain. 127. Page 33.

From what time does commercial paper bind the maker or drawer? 128. Page 33.

Are there some conditions under which commercial paper cannot be enforced against the drawer or maker? If so, name any such condition. 128, 129. Page 33.

When is commercial paper "delivered"? 128, 129. Page 33.

If all of the original parties to an instrument have signed and properly executed it, is it then, and with nothing more, an enforceable contract? 128, 129, 130. Pages 33, 34.

If after the paper is properly put in circulation it is stolen from the owner and sold to a bona-fide purchaser, can the latter collect the amount from the maker and retain the money? 130. Page 34.

How is commercial paper negotiated? 131, 132. Page 34.

Is it necessary for the owner to indorse the instrument in negotiating it? 132, 133. Page 34.

Must there be a consideration for the making, indorsing, or accepting of commercial paper? 134-136. Page 34.

Must the consideration have been paid to, or be for the benefit of, the one placing his name on it? 134-136. Page 34.

Of what may the consideration consist? 134-136. Page 34.

If part of the consideration for commercial paper was lawful and part illegal, what part of the instrument can be enforced? 138. Page 35.

State some considerations that are illegal. 139. Page 35.

If a father makes a gift of his own note to his son, can the son enforce the note? 144. Page 35.

If one makes a gift to his brother of commercial paper made by a third party, can the recipient of the gift enforce the note for his own benefit? 145. Page 36.

When, if ever, is the check drawn hy the donor effective as a gift? 146. Page 36.

What formalities are absolutely essential to perfect a gift in case of the death of the donor? 147. Page 36.

If it can be proved that a father gavs his daughter a government hond, the father in the gift retaining the property in his possession and control until his death, will such gift be effectual after the death of the father? 148. Page 36.

When does an instrument have "inception"? 149. Page 36.

For how long a time may the holder make extension of tims of payment to ths maker without releasing the indorsers? 150-156. Pages 36, 37.

If one indorser is released, does it release any other parties to the instrument? Who, if any? 150-156. Pages 36, 37.

If the maker of a note has given the holder collateral security for the debt, and they agree together to release the collateral, does such action release any of the parties? Who, if any? 150-156. Pages 36, 37.

If the holder of the instrnment neglects to proceed in law against the maker for a long time, does such inaction release ths indorsers? If so, or if not, is the rule universal? 155-156. Page 37.

If the holder of a past-dus indorsed instrument accept interest that is due, has hs prejudiced his security in any way? 157. Page 37.

If an indorser of commercisl paper feels that it is for his interest to have the maker or other indorsers proceeded against, what remedy has be? 159-156. Page 37.

If an indorser, as last mentioned, takes up the paper, are any of tbe parties thereby released? 160. Page 37.

Who usually "protests" commercial paper? 162. Pags 37.

Why is paper protested? 162. Page 37.

When is paper protested? 163-165. Page 38.

What are aome of ths requiaites of a protest of commercial paper? 163. Page 38.

If there ia no place of payment mentioned in ths instrument, where is it to he presented for payment or protest? 164-163. Page 38.

If several persons sign a note as makers, how much of the amount of the note can the holder make one of them pay? 166. Page 38.

If one of several signers, as hefore mentioned, pays, what contribution can he have from the others? 166. Page 38.

If an instrument is silent as to time of payment, when is it payable? 167. Pags 38.

At what time is an instrument due and payahle on demand dns and payahle? 168. Page 38.

If an instrument is payable at sight, when is it dns and payahls? 169. Page 39.

Are there any exceptions to this rule? 169. Page 39.

If an instrument is payable a certain number of months after date, what months are meant? 170. Page 39.

If a note is dated February 20th, and is payable in three months, when is it due? 171. Page 39.

If a note is dated January 31st, payable in one month, when is it due? 172. Page 39.

When the time of payment is expressed in days, are Sundays and holidays included? 172. Page 39.

In computing the maturity of an instrument, is the day of the date included? 174. Page 39.

When is a note dated May 20th, payable in ninety days, due? 175. Page 39.

Does the law allow fractions of days in computing time? 175. Page 39.

If two dates are given, one the day of the week and one the day of the month, and they are inconsistent, which one governs? 177. Page 40.

If an instrument matures on a Sunday or holiday, when does it become payable? 178. Page 40.

Can a check or note that is due and payable on Saturday in States where Saturday is a half holiday be presented on that day? 179. Page 40.

Is the foregoing rule true as to other contracts? 180. Page 40.

What are days of grace? 182. Page 40.

If an instrument stated on its face that it was due July 20th,—thus, "July 20, 1902, pay to the order of," etc.,—and it was made in a State where days of grace are allowed, when would it be due and payable? 185. Page 40.

What is accommodation paper? 186. Page 40.

Is accommodation paper valid? 187. Page 40.

Can corporations make accommodation paper or become indorsers on such paper? 188. Page 41.

Can a partner bind his firm as a maker or indorser on accommodation paper? 189. Page 41.

How does a check differ from a bill of exchange or a draft? 190. Page 42.

What term applies to an instrument that is drawn by one bank on another? 191. Page 42.

What effect does the death of the drawer of a check have on its payment? 194. Page 42.

If a bank, for reasons of its own, chooses to refuse payment of a check, has the holder of the check a right of action against the bank? 195. Page 42.

QUESTIONS.

Is the law on thie anhject common to all the States? 196, 197. Page 43.

Must hanks pay checks in the order of their presentation? 198. Page 43.

When must the holder of a check present it for payment? 200. Page 43.

Is there a different rule where the bank is in a place other than that at which the holder receives the check? 201. Page 43.

If a check is sent to another hank for collection, when ehould it preeent it for payment? 203. Page 43.

If a depositor has ineufficient funds to pay the full amount of the check he has drawn, must the bank apply whatever balance he has to the payment of the check? 205. Page 43.

If the drawer of a check has etopped payment on it, what is the dnty of the hank? 206. Page 43.

If a hank accepts or certifies a check, what effect does that have on the liahility of the drawer or indorser? 207. Page 43.

Ia the rule changed if the drawer procures the bank to accept the check? 208. Page 44.

Will a verbal acceptance or certification of e check ever bind a bank? 209. Page 44.

Where a hank pays a check to an innocent bolder of it, and it euhsequently develops that the drawer's signature was forged, on whom does the loas fall? 212. Page 44.

If a bank certifies a check, say for $500, and it suhsequently develops that the check has heen fraudulently raised from $5 to $500, what amount will the hank be ohliged to pay? 215. Page 44.

If a hank paid a check to a hona-fide holder, and it subsequently discovered that the drawer's account is not good for the amount, can the bank recover the amount from the perеon to whom the check was paid? 212. Page 44.

If a hank gave a depositor credit for a check, and during that day it discovered that the check waa not good, can it rescind the credit? 213. Page 44.

Is a bank in paying or certifying a check supposed to know that the indorsers' signatures are genuine? 215. Page 44.

If, after a bank had paid a check to a bona-fide holder, it should develop that the indorser'e signature was forged, on whom would the loss fall? 215, 216. Pages 44, 45.

Can a bank certify a check dated ahead? 217. Page 45.

Can an officer of a bank certify his own check? 218. Page 45.

What officers of a hank may certify a check? 219. Page 45.

What is a bill of exchange? 220. Page 46.

What is an inland bill of exchange? 221. Page 46.

What is a foreign bill of exchange? 222. Page 46.

Is a bill of exchange usually drawn against any particular account or on account of any particular property? 223. Page 46.

Is a bill of exchange valid in the hands of one who knew that it was drawn and accepted simply as an accommodation to the drawer? 224. Page 46.

What is the order of liability of the parties to a bill of exchange that is not yet accepted? 225. Page 46.

Does this order of liability change after acceptance? 226. Page 46.

Does the holder of the bill have to recognize this order of liability in proceeding against any of the parties or all of them? 227. Page 46.

Does the drawer of a bill of exchange make any specific warranty in the mere act of drawing the bill? 228. Page 47.

What does the indorser of a bill of exchange warrant? 229. Page 47.

If after the acceptance of a bill of exchange by the drawee, he should ascertain that the drawer's signature was forged, would the drawee be obliged to pay the bill, and if he did pay it, on whom would the loss eventually fall? 230. Page 47.

If the holder of a bill of exchange or of a check should present it for payment to the party on whom it is drawn, and the holder should receive money thereon (but without indorsing the instrument), and it should subsequently develop that the indorser's signature was forged, on whom would the loss fall? 231 (same rule as 212). Page 47.

State the first duty of the holder of a bill of exchange? 232. Page 47.

If a note is presented to the bank at which it is payable and it is not paid, but is protested for non-payment, would the drawer be released if he was not duly notified? 233. Page 47.

Does the same rule hold as to the drawers or makers of a bill of exchange or a draft? 233. Page 47.

What is the duty of a holder of a bill of exchange in presenting it for acceptance? 234. Page 47.

Must the acceptance be written on the face of the bill? 236. Page 47.

Must the holder accept the acceptance if it is signed by an agent of the drawee? 237. Page 48.

Is it any evidence of irregularity of a bill of exchange if it is accepted before it leaves the drawer's hands? 238. Page 48.

How long has a drawee to decide whether he will accept the bill or not? 239. Page 48.

If a drawee has detained the bill to decide whether he will accept it or not, when must he date his acceptance? 240. Page 48.

Does the term "draft" have any specific definition as applied to commercial paper? 241-242. Page 49.

What is the definition of a promissory note? 246. Page 50.

QUESTIONS.

The letters refer to illustrations A to U, pages 57 to 98

What are the usual written words that go to the making up of a check? A.

As so written who is the payee; drawee; drawer? A.

What does the drawer specifically warrant in drawing the check? A.

What has the drawee contracted to do? A. (Has the drawee of a bill of exchange made the same contract? C.)

Has the payee in indorsing the check and receiving the money on it made any contract with the bank? What? A.

If a check is payable to W. E. Bonham, state an "indorsement in blank" by such person. A.

What are the usual written words that go to the making up of a promissory note? B.

Who is the payeee? The maker or drawer? B.

Was it absolutely necessary to the validity of this note that it have a date? Page 11. b.

Would the signature of the drawer be valid if written with a pencil? Page 11. a.

If no time of payment was specifically stated, when would it have been payable? Page 12. c.

If no specific place of payment had been stated, where would it have been payable? Page 10. g.

What are the usual written words that go to the making up of a bill of exchange? C.

What is the first duty of the bolder of a bill payable a given time after sight? Page 32.

The bill, Form C, is drawn on a person at Belfast, Ohio. If ths hill was owned by or was sent for acceptance to the First National Bank of Cleveland, could the bank properly allow the drawee to accept it payable at such bank? Page 24.

If the drawee of the above bill had simply written "James McBride" across its face, with no further words before or after his name, would he have assumed any liability? Page 23. Where would a bill so accepted, or where in Belfast is the bill C payable? (See D.) Pages 10, 11.

If "Thos. Snell" was required to take up this bill by reason of its non-payment, what proportion would he be entitled to collect of "Jno. K. Hale"? Or of Wm. R. Carpenter?

(Other queries are suggested by the matter on back of C.)

What instruments does the term "draft" usually apply to? D.

QUESTIONS.

If an instrument, payable on demand, in the form of a draft or of a bill of exchange is drawn on a bank, what is it properly called? D.

If an instrument was payable to the order of J. W. Robinson and he wished to negotiate it to Horace Bemis by an "indorsement in full," what would be the writing? E.

Who would be the indorsee in such an indorsement? E.

If such an indorsee presented the check for payment, what would be a proper form of indorsement? E.

What warranty would such last indorsement carry with it? E.

State the rule as to when the holder of a check must present it for payment if he wishes to retain the liability of all the parties thereto. F.

What liability does a bank assume in certifying a check? G. Pages 44, 45.

Are any of the parties to a check released if the holder has it certified? G.

Is the rule different if the maker procures it to be certified before parting with it? G.

If the certified check has been raised before or after certification, on whom does the loss fall? G.

If the maker's signature has been forged, on whom does the loss fall? G.

If the indorser's signature is forged, on whom does the loss fall? G.

Draw an accepted bill of exchange, usual form, with two or more indorsers. H.

State the order of their liability among themselves of the several parties. H.

Of what does a "blank indorsement" bear evidence? J.

When an instrument payable "to the order of" Wallace Ford has been indorsed by his writing his name in blank (Wallace Ford) on the back thereof, and it has thereafter come into the hands of Seward Goss, how can Goss again make it an instrument payable "to order"? J.

In what partnerships has each member of the firm implied authority to bind the firm by signing or indorsing commercial paper? J.

Where the partnership is such that no member has such implied authority, is any one bound by such firm signature? J. Nos. 1, 34, 76, 25.

State the liability among themselves of the several indorsers to a negotiable instrument. K.

State the liability of the second of three indorsers to the holder of the instrument. K.

State the liability of such second indorser to the first indorser. K.

If an instrument is payable to Nathaniel Tolliver "or bearer," and Tolliver should indorse it "Pay to the order of Simon Jarvis, Nathaniel Tolliver," is the instrument then payable "to bearer"? L.

QUESTIONS.

Write or state a restrictive indorsement. L.

What is the effect of a "restrictive indorsement" on the negotiability of an instrument? M. L.

If Wm. R. Carpenter was to lend Hale Davis $700, on a note signed by Davis and indorsed by Nat. C. Chadwick, how should the face of the note he drawn? N.

If there are three payees named in a note and they indorse the note in the order in which they are named, what is the liability of the second indorser to the first indorser? N.

If Willis Watkins were treasurer of the Kennedyville Plank Road Company, what form of signature should he use in affixing the corporate signature to commercial paper? P.

What officer of a corporation has implied authority to sign its commercial paper? P.

If Edward Dorsey were agent for James Nelson, what would be the proper form of signature for Dorsey to use to hind Nelson as maker of commercial paper? Q.

Is the fact that one is "agent" for another evidence that the agent can make or indorse paper in the name of the principal? Q.

Has an agent with authority to collect accounts implied authority to indorse checks drawn to the order of his principal and given in payment of one of such accounts so collected by the agent? Q.

What is the usual intent of one who indorses "without recourse"? R.

Does auch indorsement relieve the indorser from all financial liahility hy reason of the instrument? R.

Can you write a form of "indorsement without recourse" that would relieve the indorser from all liahility? R.

Write a form of "waiver of protest." S.

If a note were drawn payahle to Wm. R. Carpenter without the use of the words "or order," or hearer, or similar terms, would it he negotiahle? T.

State the form of promise and of signature that would constitute a "joint note"; a "several note"; a "joint and several note." M.

What is the liability to the holder of each of the signers of a note? What amount may he collect of each? M.

What is their liability among themselves? M.

Write an "indorsement in full"; "indorsement in hlank"; a "qualified indorsement"; a "conditional indorsement"; a "restrictive indorsement." M.

Which of these indorsements, if any, would destroy the further negotiation of the instrument aa commercial paper? M.

QUESTIONS

The numbers refer to Illustrations, No. 1 to No. 134, from pages 103 to 508.

Do the words "in New York Exchange" express "certainty" ae required hy the statute? If not, why? No. 3.

Is "subject to terms of contract," when used in a promissory note, a condition? How about "given for machinery as per contract"? No. 4.

Does a qualified acceptance change the character of a bill of exchange? If eo, in what way? No. 5.

State some forms of acceptance that are qualified. Noe. 5, 6, 7, 8.

What is the effect of a material alteration? Of commercial paper? No. 5. Sec. 125 et seq.

Is a draft drawn on a special account a negotiable instrument? Nos. 8, 7, 6.

State instances of "special funds" which, if specifically drawn against, would take the instrument out of the rule of commercial paper. No. 8.

What event determines future time? Does death? How about the words "I promise to pay to her estate"? No. 9.

State a contingency that will render a note non-negotiable? No. 10.

From when does a note without date, take its date? No. 11.

Why ie an indorser of past due paper, with notice of a counterclaim, not liable? No. 12.

If a note has this form "and interest at —— per cent," has holder authority to fill it in? Suppose there was no each blank? No. 13.

Under what circumstances may a conditional delivery ba shown? No. 14.

Who will he held when a draft is drawn to an aesumed payee? No. 15.

Oral guaranty of a note. No. 16.

Where an act is required to be done by a board of directors, is the act valid if each director gives hie written assent outside of a board meeting? No. 17.

Hae the treaeurer of a corporation who eigns implied authority to indorse and sell notes taken in the couree of its business. No. 18.

Where an officer hae authority to indorse notes in the name of a company, will that authority extend to paper indoreed for the accommodation of others if the indorsing corporation receives a honue for the indorsement? No. 19.

Give instancee of authority required to aign corporate papers. Nos. 27, 18, 19.

How must a corporation execute its paper? No. 20.

What is the effect of erroneous forms of signatures to corporation paper? Give correct form. Nos. 21, 22, 23, 24, 25.

Of Executors, Administrators, Trustees, and Guardians. Nos. 26, 27, 28 and 29.

If a note was given for a debt of the estate, or the funeral expenses of the deceased, and was correctly signed in the name of the estate by the executor, would it bind the estate of the executor? No. 27.

If a note was signed "A. L. Smith, Executor of Estate of T. J. Reynolds," who would be bound by it? No. 26.

Does a guardian or trustee who in good faith deposits the money of his ward in a bank account in the trustee's name individually incur any responsibility if the bank fails? No. 29.

Is middle initial part of a man's name? No. 30.

Where there are two persons of the same name and one of them presents a check to a bank drawn to the order of the common name, and the bank in good faith pays the money to the one presenting it, is it protected if the check belonged to the other person with the same name? No. 30.

Can one partner in a manufacturing business bind his other partners by signing or indorsing commercial paper? No. 32.

Instance where indorsing and receiving money on a check did not follow the rule that such indorser warranted all previous indorsements. No. 31.

Does the general open authority to carry on a store authorize the making of notes in the name of the principal? No. 33.

If the treasurer of a corporation draws its check to his individual creditor in payment of his debt, and the creditor takes the check and draws the money, is the creditor under any risk thereby? No. 34.

If one offers to sign as agent, or through power of attorney, for another, what protection can the holder reasonably require? No. 36.

Can the directors of a corporation authorize an accommodation indorsement? What is the effect if all the stockholders authorized? No. 42.

Does a power to indorse notes carry with it power for the agent to indorse his own individual notes? No. 43.

Where a note is transferred without what is, in law, equivalent to a commercial indorsement, what effect does it have? No. 46.

Is a guaranty, in itself, when written on the back of a negotiable instrument, always equivalent to an indorsement? No. 46.

Is an assignment or an indorsement on a detached paper equivalent to an indorsement? No. 46.

What is meant by an indorsement in blank? No. 48.

What is meant by the language of clause 3, sec. 35? Give an illustration. No. 49.

Does the usual indorsement "without recourse" relieve the indorsers from any liability in connection with the paper? No. 50.

Must a note made to the order of "the directors" of a corporation be indorsed by all the directors? What is a sufficient indorsement of such a note? No. 52.

What is the effect of an indorsement to the cashier of a bank when his official position is not designated? No. 53.

State instances where the signatures of the individual members of the firm are not equivalent to the writing of the firm name. No. 55.

Give a definition of what is meant by "good faith" in a transaction wherein a note is purchased. No. 56.

If a bank could safely give an agent money for his draft on his principal, could it as safely give him credit for it,—and then pay the money on his individual check? No. 58.

If a bank buys a negotiable instrument and gives the seller credit for it, is it, thereby, a bona-fide holder to the same extent as if it paid money for it. No. 59.

What constitutes notice of defective title? No. 60.

Would payment to a creditor, of a partner in payment of his individual debt, in cash taken from firm's cashbox, constitute "defect"? Nos. 61, 62, 70.

Can the president and secretary of a corporation give valid pledge of property of the corporation to secure the president's debt? No. 63.

If a note is payable to one as trustee, and he properly indorses it, is a bona-fide purchaser protected in taking it? How would this be as to stocks? State the general reasons for your answer. No. 64, 65.

In all States does a guaranty written on a note inure to the benefit of subsequent purchasers? No. 72.

Where there is an agreement to accept drafts generally, what is acceptor's liability? No. 73.

No. 76 is a ruling, seemingly not in accord with the statute.

What is the liability of indorsers, under the statute, of a note usurious at its inception? Of the maker? No. 79.

Where no place of payment is named on a note, and note was not actually presented to the maker, at his residence or elsewhere, is indorser discharged? No. 81. See, also, No. 82.

What is the duty of the owner of a check as to its presentation? No. 85.

What procedure may he adopted where there has been a payment of a draft by worthless check. No. 86.

Give an instance of insufficient notice of dishonor. No. 88.

Under what circumstance does an indorser waive demand and notice? Give another instance. No. 89.

As to demand and notice, what conditions affect the liability of an indorser? No. 90.

Protest cases. No. 91, 92, and 129.

Circumstances under which notice to indorsers was unnecessary. No. 93.

Does a check drawn "in full of account," and cashed by the payee, operate as payment of the whole account if there is more, in fact, due on the account? Are there exceptions? What are they? No. 95.

What is the effect of the purchase by a firm of a note of one of the partners? No. 96.

What effect does an extension of time of payment of commercial paper have on the indorsers and sureties? Nos. 97, 98, 99 and 100.

What is the effect of a material alteration? No. 101. Immaterial? No. 102. Of commercial paper? No. 103.

Inserting name of additional payee? No. 104. Of the date? No. 105. Of erasure? No. 106.

Is a telegraphed answer that maker of a check is "good for the amount" an acceptance under the statute? No. 108.

A qualified acceptance. No. 109.

State some forms of acceptance that are qualified. Nos. 110, 111, and 112.

When is a note dishonored by non-acceptance? No. 113.

Liability of banks in handling bills of lading attached to drafts. Nos. 114, 115, and 116.

Note executed on Sunday. No. 117.

If the maker of a note subsequently gives security to one of his several sureties, who has the benefit of the security? No. 118.

Is one protected who in good faith, and with no notice or knowledge of his insanity, takes the check of an insane person? No. 119.

Is an assignment or an indorsement on a detached paper equivalent to an indorsement? No. 120.

If a note is not properly indorsed when sold, but is subsequently properly indorsed, of what dates does the instrument take effect? No. 120.

If a note is made payable in,— say, Ohio, and is indorsed in Indiana, by the laws or which State are the parties governed? No. 124.

If a note provides for the payment of attorney's fee, is it negotiable on all States? No. 125. See No. 54.

Is a note formally issued under a seal a negotiable instrument? No. 129.

Is an instrument for "one hundred dollars, in current funds," a negotiable instrument? No. 132.

Does the liability of an indorser attach usually to one who writes his name on the back of the last-mentioned instrument? No. 132.

What is the difference between a general guaranty and a special guaranty? Who may take advantage of them? No. 133.

If a draft perfect in form is stolen from the drawer by the payee and is transferred to a bona-fide holder, can such holder enforce it? No. 134.

When a note is executed in one State and indorsed in another, indorser's liability is governed by the laws of what State? No. 54. See No. 134.

INDEX

When reference is to a page, the word "page," in parentheses, accompanies the figure. In all other cases the reference numbers are to the *section* numbers of the Negotiable Instruments Law, given in this book.

	SECTION
ACCEPTANCE	
By Separate Instrument	134
Definition	191
General, What Constitutes	140
Holder Entitled to, on Face of Bill	133
How Made	132
Kinds	139
Liability of Drawee Retaining or Destroying Bill	137
Of Incomplete Bill	138
Promise, When Equivalent to	135
Qualified. Rights of Parties	141
Time Allowed Drawer	136
Trade Acceptance	(Page) 449
Verbal, When Binding	(Page) 44
ACCEPTANCE FOR HONOR	
Agreement of Acceptor	165
Dishonor of Bill by Acceptor for Honor	170
How Made	162
Liability	164
Maturity of Bill Payable at Sight	166
Presentment to Acceptor, How Made	168
Protest. Or Containing a Reference in Case of Need	167
When Bill May Be	161
When Deemed for Drawer	163
When Delay in Presenting is Excused	169
ACCEPTED CERTIFIED CHECK	
Indorsers Released	(Page) 29

ACCEPTOR		SECTION
The Principal Obligor	(Page)	23
ACCEPTOR OF CHECK		
Acceptance and Certification	(Page)	24
ACCOMMODATION PAPER		
Defined	(Page)	40
ACCOMMODATION PARTY		
Liability of		29
ACTION		
Includes Counter-Claim and Set-Off		191
AGENT		
Liability of		69
Signature, Authority, How Shown		19
ALTERATION		
Material	(Page)	18
ASSIGNMENT		
Effect of When Written on Separate Paper	(Page)	26
AT SIGHT		
Defined	(Page)	13
BANK		
Definition		191
BEARER		SECTION
Defined		191
Payable to, When		9
BILL		
Meaning of		191
BILLS IN SETS		
Acceptance of Bills Drawn in Sets		181
Constitute One Bill		178
Effect of Discharging One of a Set		183
Liability of a Holder Who Indorses Two or More Parts of a Set to Different Persons		180
Payment By Acceptor of Bills Drawn in Sets		182
Rights of Holder Where Different Parts are Negotiated		179
BILL OF EXCHANGE		
Addressed to More Than One Drawer		128
Inland and Foreign		129
Definition		126
Not an Assignment of Funds		127
Referee in Case of Need		131
When Treated as a Promissory Note		130

	SECTION
BLANKS	
When They May be Filled	14
CERTAINTY AS TO SUM	
What Constitutes	2
CHECKS	
Certified Liability of Parties (Page)	43
Not An Assignment (Page)	42
Post-Dated (Page)	42
COMMERCIAL PAPER	
As Used Herein (Page)	9
Definition (Page)	3
CONSIDERATION	
Effect of Want of	28
Presumption of	24
CONSTRUCTION	
Where Instrument is Ambiguous	17
CONTRIBUTION	
Enforcible When and How (Page)	3-8
DATE	
Ante and Post-Dated	12
Presumption of	11
When May be Inserted	13
DEFINITIONS	191
DELIVERY	
Defined	191
Stolen Paper (Page)	34
When Effectual, When Presumed	16
Warranty	65
DEMAND	
When Payable on	7
DISCHARGE	
Alteration, Effect of	124
Cancellation, Unintentional: Burden of Proof	123
How	119
Renunciation By Holder	122
Right of Party	121
What Constitutes a Material Alteration	125
DISCHARGED	
When Persons Secondarily Are	120
DRAFT	
Explained (Page)	48

DRAWER OF BILL OR OF A DRAFT		SECTION
Status of	(Page)	21
DRAWEE OF A BILL OR DRAFT		
Before and After Acceptance	(Page)	22
FORM		
Of Commercial Paper	(Page)	10
GUARANTOR		
Is an Intruder	(Page)	30
HOLDER		
Defined		191
His Obligations	(Page)	31
HOLDER IN DUE COURSE		
Notice of Defect		56
Notice Before Full Amount Paid		54
Right to Sue, Payment		51
Rights of		57
What Constitutes		52
When Not Deemed		53
When Subject to Original Defenses		58
Who is Deemed a Holder		59
HOLDER FOR VALUE		SECTION
What Constitutes		25
When Lienor		27
HOLIDAY		
When Last Day Falls On		194
INCOMPLETE INSTRUMENT		
Not Delivered		15
INDORSEMENT		
By Infant or Corporation		22
Blank, How Changed to Special		35
Conditional		39
Defined		191
Effect of Transfer Without		40
How Made		31
In Representative Capacity		44
Kinds of		33
Misspelled Name or Wrong Designation		43
Must Be of the Entire Instrument		31
Payable to Bearer, How Negotiated		40
Place, Presumption		46
Qualified		38

	SECTION
Restrictive, Rights of Indorsee	37
Special. In Blank	34
Striking Out	48
Time, Presumption	45
To Person as Cashier, Effect of	42
When Restrictive	36
Where Payable to Two or More	41
INDORSER	
Effect of Paper Not Properly Protested	(Page) 26
Liability of General Indorser	66
Liability of an Irregular	64
Liability Where Paper Negotiable By Delivery	67
When Person is So Deemed	63
INDORSER'S CONTRACT	
Stipulations	(Page) 24
INSTRUMENT	
Drawn to Person as Cashier	42
Meaning of	191
ISSUE	
Defined	191
LIABILITIES OF PARTIES	SECTION
Of Acceptor	62
Of Drawer	61
Of Maker	60
LIABILITY	
Order of	(Page) 26
LAW	
Common and Statute	(Page) 52
LAW MERCHANT	
When Governs	196
MISSPELLED NAME	
How Rectified, Test	(Page) 27
NEGOTIABILITY	
Continuation of Negotiable Character	48
Provisions Not Affecting	5
NEGOTIABLE INSTRUMENTS	
Form of	1
NEGOTIATION	
Defined	(Page) 34
What Constitutes	30

NOTICE OF DISHONOR	SECTION
By Whom Given	90
Delay, How Excused	113
Deposit in Post Office	106
Form	96
Given By Agent	91
Given on Behalf of Holder, Effect of	92
Non-Payment Where Acceptance Refused	116
Of Non-Acceptances, Omission To Give	117
Sufficiency	95
Time Within Which Must Be Given	102
To Antecedent Party, Time of	107
To Bankrupt	101
To Partners	99
To Persons Jointly Liable	100
To Whom Given	89
To Whom May Be Given	97
Waiver of	109
Waiver of Protest	111
When Agent May Give	94
When Dispensed With	112
When Need Not Be Given to Drawer	114
When Need Not Be Given to Indorser	115
When Protest Must Be Made, When Need Not	118
When Sender Deemed to Have Given Due Notice	105
Where Given By Party Entitled Thereto, Effect of	93
Where Must Be Sent	108
Where Parties Reside in Different Places	104
Where Parties Reside in Same Place	103
Where Party is Dead	98
Whom Affected By Waiver	110
OMISSIONS	6
ORDER	
Payable to, When	8
PAYMENT FOR HONOR	
Declaration Before	173
Effect on Subsequent Parties Where Bill is Paid	175
How Made	172
Preference of Parties Offering to Pay	174
Rights of Payer	177
Where Holder Refuses to Receive Payment Supra Protest	176

	SECTION
Who May Make	171
Parties to Commercial Paper	(Page) 20
PERSON	
Includes	191
PRESENTMENT FOR PAYMENT	
Dishonored, Liability Person Secondarily Liable	84
Duty of Holder Where Bill is Not Accepted	100
Effect of Want of Demand Upon Principal Debtor	70
How Made	145
Instrument Must Be Exhibited	74
On What Day May Be Made	146
Place of	73
Rights of Holder Where Bill is Not Accepted	151
Sufficiency	72
Time, How Computed	86
Time of Maturity	85
To Joint Debtors	78
To Persons Liable as Partners	77
What Constitutes in Due Course	88
Where Delay is Excused	81
When Dishonored By Non-Acceptance	149
When Dishonored by Non-Payment	83
When Excused	148
When Failure Releases Drawer and Indorser	144
When May Be Dispensed With	82
When Must Be Made	143
When Not Required to Charge Drawer	79
When Not Required to Charge Indorser	80
When Principal Debtor is Dead	76
When Time is Insufficient	147
Where Instrument is Not Payable Upon Demand	71
Where Instrument Payable at Bank	75
Rule	87
PRINCIPAL OBLIGOR	
Defined	(Page) 3
PROMISSORY NOTES AND CHECKS	
Definitions	184
Check Defined	185
Effect of Certification of Check	187
Effect Where Holder of a Check Procures it to Be Certified	188

	SECTION
When Check Operates as an Assignment	189
Within What Time a Check Muat Be Presented	186
PROTEST	
By Whom Made	154
Explained . . . (Page)	50
How Made	153
In What Cases Necessary	152
When Dispensed With	159
When Made	156
Before Maturity Where Acceptor Insolvent	158
When May Be Again Protested	157
When to Be Made	155
Where Bill is Lost	160
REASONABLE TIME	
What Constitutes	193
RELEASE OF PARTIES	
What Discharges (Page)	36
SIGNING	
Effect of Forged Signature	23
Effect of Signature by Procuration	21
Trade or Assumed Name. Liability	18
SUNDAY	
Time. How Computed	194
SURETY	
Obligations of (Page)	30
TIME	
Determinable Future, What Constitutes	4
How Computed. When Last Day Falls on Holiday	194
Inconsistent Dates (Page)	42
On Demand. At Sight (Page)	38
Reasonable. What Constitutea	193
TERMS	
Sufficiency of	10
TRADE ACCEPTANCE (Page)	449
TRANSFER	
Prior Party May Reissue and Negotiate	50
UNCONDITIONAL PROMISE	3
VALUE	
Defined . . .	191
WRITTEN	
Comprises . . .	191

UNIVERSITY OF ILLINOIS-URBANA
3 0112 057562479